

A BRIEF COMPARISON OF THE MAIN FACTORS IN INTERNATIONAL MIGRATION TRENDS, LAWS AND POLICIES IN BRAZIL AND CHILE

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ABSTRACT

This paper aims at presenting a brief comparison between the international migration trends, policies and laws in Brazil and Chile based upon detailed past studies on both countries. Both these two situations merit a comparison due to the relation between their population and the percentage of migrants/refugees residing in each country and hence, the differential forms of governance, visibility and social impact of their integration. Methodologically, this is an exploratory qualitative study that uses secondary resources: specialized literature, public documents, reports, statistics and information gathered from relevant webpages, and press releases. The data obtained was studied using content analysis. Results show that both countries experienced, over long democratic periods, a slow transition full of advances and setbacks, between very restrictive laws issued in dictatorship, and laws that present a marked tension between securitization and the protection of the human rights of migrants. While in Brazil the last migration law of 2017 was designed with high engagement from civic society and migrants themselves, Chile's 2021 law allowed only their selective participation. Moreover, in Chile there was a quite recent tendency towards the deportation of some migrant nationalities, most especially, that of Haitians an aspect absent from Brazilian migration policy.

Keywords: migration policies; public engagement; international migration; governance; discrimination; human rights; national security; social integration.

1.0 INTRODUCTION

The International Organization for Migration (IOM) estimates that the number of international migrants has increased in the last five decades, reaching 281 million in 2020, which represents 3.6% of the total global population. Between 2015 and 2020, there was a global increase of 49% of South American migrants (IOM, 2024).

According to Moreira (2019), Brazil experienced two recent migratory booms, one in 2010 and another one between 2013 and 2014. The author explains that the reasons for these booms were related to the media's boost of the Brazilian economic image that attracted migration, and also, that more restrictive migration policies began to be implemented in Northern countries after the 2008 financial crisis.

In the case of Brazil, measured through a proxy - the permanent and temporary residence permits granted by the National Migration Registry System (SisMigra) that runs an Observatory of International Migration (OBMigra) – international migrants increased between 2010 and 2023, from 46,000 to over 200,000 (Oliveira et al., 2024), which recently corresponds to around 1.2% of the total local population (IOM, 2024). In the Southeast Region, international migrants represented 30.2% of Brazilian residence registries, involving approximately 60,2 thousand people. Between January 2010 and August 2024, Brazil registered 1,700,686 migrants, a category that includes permanent and temporary residents, as well as border migrants, and this increase was significantly influenced by the massive flow of Venezuelan migrants into the country.

In Chile, a country with approximately ten times less population than Brazil (19,76 million inhabitants), in 2015, three quarters of resident migrants arrived from other South American countries- as part of the phenomenon named as South/South migrations (IOM, 2016). Foreign population increased significantly in Chile by December 2019, reaching 7.8% of the total population (Jesuit Service for Migrants (SJM, 2020). According to the National Institute of Statistics (INE) and the National Service of Migration (SERMIG), by the end of December 2023 the number of foreign residents was 1,918,583, a growth of 4.5% relative to 2022, that significantly outnumbered the percentage of the total of migrants living in Brazil.

This reflects an abrupt growth of international migration to Chile, mainly during the last five years. These migrants arrive from Venezuela (38%), Peru (13.6%), Colombia (10.9%) and Haiti (9.8%). The majority of migrants (56,8%) reside in the Metropolitan Region of Santiago de Chile (INE/SERMIG, 2023). In terms of demographic characteristics, men slightly outnumber women (51.05%). The major concentration of these populations is found in the 30-39 age-cohort – with ages between 30 and 34 years old corresponding to 16.8 % of migrants from that group-, i.e. they are a potentially economically active population and belong to reproductive ages. Meanwhile, children and adolescents represent 15.8% of total migrants and the third age group (over 65 years old) is much smaller (3.8%).

However, foreign residents in an irregular situation in Chile amounted to a total of 336,984 individuals in 2023, representing 17.6% of the estimated total migrants for that year. The percentage of irregular migrants has grown progressively in the last five years and it has been hard to estimate. Being undocumented, they become more vulnerable to exploitation by criminal organizations, particularly those involved in human trafficking, as well as, to different types of fraud in living arrangements and other.

In Brazil, corridors for undocumented migrants entering the country have opened in the North. Undocumented foreigners in Brazil face complex challenges, involving several factors that can lead to sustained irregularity, such as visa expiration and migration violations. They are punished by fines, restrictions on access to public services and labour opportunities, ineligibility for residence benefits, difficulties in renewing visas and ultimately deportation.

1.1 The Venezuelan diaspora

In both countries, increases in the number of migrants in the last years reflect very clearly the Venezuelan humanitarian crisis. The Venezuelan diaspora is the result of a long political and

socioeconomic process, that destabilized the country, especially since 2010, when oil prices – main commodity of the country- diminished substantively in the international market. This situation reflected directly in the most vulnerable part of the population that suffered lack of employment, low endogenous production, reduction in consumer patterns and extremely high inflation rates, as well as, the lack of basic goods, such as food and medicines. The crisis had led to a reduction of 35 % of the country's economy since 2012; approximately, 82 % of the population lived under the poverty line and 68 % of children experienced malnutrition (Gurovitz, 2018).

Further on, the corruption and co-optations within the Executive and other public agencies led to a State failure, especially since 2013 when, after the death of President Hugo Chávez, President Nicolás Maduro came into power. Someone who was considered initially politically moderate, revealed himself as an extremist that runs the country as a dictatorship. At that time, Venezuela experienced a major migration crisis and one that indirectly impacts most Latin American countries' migration patterns (Lima Mendes et al., 2022). In May 2025, R4V reports the existence of 6,874,261 Venezuelan Refugees and Migrants in Latin America and the Caribbean.

Since 2014, Venezuelans have arrived to Brazil and Chile in waves with different social, economic and cultural characteristics; the earlier one, having higher resources and being more qualified than the last. There were 568,058 Venezuelan migrants and refugees residing in Brazil in 2024 (R4V, 2024); with 132, 626 of them having been recognized as refugees and 15,088 seeking asylum. Brazil broke diplomatic relations with the regime of Nicolás Maduro and gave open support to the Venezuelan opposition. In 2018, the 'Operation Sheltering or Welcoming' was started in order to 'interiorize' the massive flows of Venezuelan migrants that predominated at the Northern States. It aimed to send Venezuelan migrants, with their consent, to other Brazilian States that could offer them better jobs and assistance. (Machado & Vasconcellos, 2022).

Since 2018, 444,423 Venezuelans have migrated massively and in a short time-period also to Chile- forming the last biggest migration wave. Among the total Chilean population, 2.6% is formed by Venezuelans and 66% of them state they want to settle definitively in this country (Joint Data Centre on Forced Displacement. 2024). However, social integration of Venezuelans is low in Chile, with only 7.7% belonging to religious groups and 5% to clubs, according to the same source. It is estimated that the overall migrant population in Chile is formed by 6.6 of undocumented migrants and among them, Venezuelan nationals predominate (66.9%) and they are usually males (INE, 2023).

Many Venezuelans have entered by unauthorized corridors mainly found in the North, after engaging in risky and tiresome journeys made often by bus or even on foot and often led by coyotes who frequently left them stranded half way before arrival. Local public institutions were totally unprepared to receive them and NGOs, especially those linked to Christian churches, played a central role in their initial protection and social integration.

Chile had been chosen by many Venezuelans to migrate as it was internationally 'sold', especially during President Sebastián Piñera's governments, as an 'oasis' of stability and growth. A steady economic growth had led to the creation of new jobs and an increase in

wages for a short period, but this mirage that had initially attracted migrants would soon fall apart during settlement (Zenteno Torre; Salazar, 2021).

Compared to other Latin American countries, in Chile, asylum requests are rarely approved. For example, in September 2023, out of the 8,333 requests for refugee status made by Venezuelan nationals, only 33 were approved. This represents an extreme challenge, because those not approved as refugees are subjected to registration according to the current Migration Law, but they can also be expelled from the country if their entrance has been illegal.

2.0 MATERIALS AND METHODS

2.1 Theoretical Considerations

2.1.1 Governance

The regulation of international migration is mainly defined by national states. Migrants can be legal in the country of settlement when the State authorizes it or clandestine, irregular or illegal concerning the state, which will use its strength to reject them (Redin, 2015). Understanding migration, demands to comprehend the National State's architecture that conditions the legitimacy of migration to "national interests" (Thayer, 2015). Often, the idea of migration is portrayed as an opportunity for development and transnational agendas are programmed following a logic of cost and benefit analysis in relation to State interests and present different type of migrants as desirable or undesirable (Domenech, 2008). Migration policies and State capacities need upgrading to deal with the challenges of the complex processes of migrants' resettlement, including substantive changes in infrastructure and public services.

2.1.2 Mission-Oriented Policies

Migration policies to be effective require to be "mission-oriented" (Kattel & Mazucatto, 2018), driven to solve concrete problems through actions with specific political, economic and welfare objectives, given that the profiles and intensity of migration flows vary in uncertain ways. For this purpose, dynamic capacities are to be developed continuously in the responsible State agencies. State coordination in this area must define clear aims, have social legitimacy and display leadership. Negotiations are aimed at reaching certain consensus between the interests of different bureaucracies in order to pass a migration law, regulate it and design specific policies which, to be efficiently implemented, require a continuous upgrading of the operational capacities of the public agents in charge.

2.1.3 Racism and Discrimination

Migrants and refugees are usually discriminated by nationals, and often even by government personnel, in their everyday lives, at the job level and in public services, such as health and education, often due to their different phenotypes, cultural habits or deficiencies in the use of the local language (Lara; Stang 2021). Racism constitutes the base for rejection and discrimination and justifies contempt, exploitation and is often reflected in press releases (Rojas Pedemonte, et al, 2015; Stefoni & Brito, 2019).). These practices have proved to be more extended and persistent in Chile than in Brazil (Acero,2025 a: Acero& Zuleta Pastor, 2025b).

However, migrants are not only vulnerable, but they also tend to develop different forms of individual or collective resilience or resistance strategies to protect their human rights (Jones, 2020; 2021). State agencies associated to migration should develop active measures to counteract the ill-effects of racism, xenophobia and discrimination on migrant well-being and social integration, diminish conflicts among residents and aim at building an equitable and cohesive society. For this purpose, they often need to upgrade their agents' training on migration and refuge, as well as develop public campaigns to raise public awareness, directed to mission-oriented migration policies and the exercise of human rights.

2.2 Method

Methodologically, this study is the result of an exploratory brief analysis based on secondary data, especially qualitative analysis of information and selective quantitative analysis of statistical data, previously processed during the development of other articles published on migration policies either about Brazil or Chile, that shall be quoted in different sections of this paper. Data was retrieved specially from specialized literature on migration in Brazil and Chile and internationally, the texts of the associated laws and amendments, documents and reports of the Ministries of the Interior, of Human Rights, of Justice and Public Security, from United Nations international organizations' publications (UNCR and IOM) and several Observatories of International Migration. The proceedings and proposals of the Conferences on Migration held in Brazil were analysed.

The information was studied through content analysis, looking for convergences, divergences and variations between those two polar aspects (Mulkay, 1993). Laws' articles and the policies derived from them and/or implemented were listed and then contrasted for both countries at different historical periods. The sources of the data include: a report and documental review of government websites, texts of the laws, decrees and amendments, academic work (mainly, a Google search on the specific topic and a revision of articles in specialized national and international journals), press releases, and studies from national and international organizations. The content was classified and compared using mainly the following criteria: national security/sovereignty/ securitization measures, the degree and forms of protection of the human rights of migrants and refugees, processes of regularization, regulatory exemptions and exemptions through ordinances and decrees, quality of setbacks on migrants' rights, political interests in conflict and form of social engagement. The study follows a descriptive-deductive approach within a historical and monographic perspective.

2.2.1 Objectives and Hypothesis

The study aims at establishing selective comparisons between migration policies in Brazil and Chile, in the last 40 to 50 years, emphasizing aspects of the latest one. It intends to answer the following questions:

- Which are the main patterns found in the ongoing migration trends in Brazil and Chile?
- How similar and different are the two last migration laws and policies implemented in Brazil and Chile? In which ways?
- What is the present scenario on international migration policy like in each country?

It develops the premise that: Securitization in the first law is similar between Brazil and Chile, however, there is a greater tension between securitization and human rights in the last law in Chile than in Brazil.

3.0 RESULTS AND DISCUSSION

3.1 National Security

Two very different laws were passed in each of the two countries at different historical moments that approached the dimension of national security and/or securitization with different emphasis. However, in each country two of those laws were passed during dictatorships and two of the present ones during democratic periods.

3.1.1 Migration Laws issued by dictatorships

In Brazil, The Statute of Foreigners (Law n 6.815/1980), was passed during the military dictatorship and was based on the internal National Security Doctrine (Cepik, 2001). It continued to be amended for decades till the Migration Law n° 13.445/2017 was approved.

That Statute was extremely repressive and restrictive, with the open aim of avoiding the entrance to the country of potentially ‘subversive’ political activists - presumed to hold communist ideologies- that ‘could disturb peace and order’. During visa-granting procedures, criminal records were required from migrants issued at the country of origin. Goals were clearly one-sided, focused and coordinated between different sectors of government. But the State had no social legitimacy to issue this policy (Acero, 2025 a).

When that Statute is described as driven by securitization, it means that ‘abnormalities’, like migration, were regarded as a threat to the State itself (Cordeiro & Pereira, 2019). That was the character of the law, which surveyed and immobilized migrants, geographically and work-wise, as well as, prohibited most types of groupings and associations among them of an economic or political order, though some exemptions were made for migrants of Portuguese origin. The National Council of Migration (CNIg), linked to the Ministry of Labour, was created to centralize and judge atypical and exceptional cases and formulate specific migration policies (Vainer, 2000).

Meanwhile, in Chile, there was also a law with a strong securitization approach, similar to Brazil’s. Decree Law no. 1094 (1975) was designed during General Pinochet’s military dictatorship (between 1973 and 1989) and implemented in 1975. This law focused on domestic security and migrant expulsion. As it was also grounded in an internal National Security Doctrine, the law was driven by the desire for broad frontier control and the prohibition of entry of potentially subversive people from the point of view of the regime (Acero & Zuleta Pastor 2024; Stang, 2016). State capacity was very limited and inter-sectoral coordination was not prioritized.

In the years of the violent civic-military dictatorship, Chile was a country that expelled residents, among them a contingent of approximately 500,000 citizens and foreign nationals who were first persecuted and then exiled for political reasons. By contrast, in the past 30 years, following the return to democracy, Chile has become a country that takes in migrants,

resulting in an exponential increase of foreign residents leading to substantive changes in migration patterns and dynamics (SERMIG, 2023).

Both the laws described followed a strong securitization approach with one main difference: the policy in Chile was more homogeneously implemented, inclined to the massive restriction or deportation of migrants and the extended exile of 'subversive' nationals (relative to their small total population), than that in Brazil. In the last country, some level of opposition to the regime, especially at the individual and cultural levels, was allowed, as far as it did not disrupt substantively the country's 'law and order'. Border security was approached in similar ways in both countries' policies.

3.1.2 Migration amendments during (re) democratisation periods

After Brazil's (re) democratization, a new project proposal on migration was considered in 2009, while a number of important aspects on migration had been previously ruled by decrees, norms and ordinances, issued often by the CNIg, such as, the right to family reunification. Minor changes, contemplating some of migrants' needs were continually being introduced in this way, until the Migration Law n° 13.445/2017 was approved.

But during the transition towards democracy, there was a lack of political agreement and a certain polarization between the positions of state agencies, especially between that of the Ministry of Justice and National Security – that proposed the separation between the rights of migrants versus that of nationals-and that of the CNIg, more prone to overcome the previous view of migrants as enemies to the country. The Council played a key role in liberalizing Brazil's migration policy and give voice to a wide range of state and non-state social actors. In 2010, visa permits allowed also some privileges of intercountry circulation for the inhabitants of Mercosur's associated countries, also to hold work permits and apply for naturalization after 5 years of permanent residency – instead of ten.

Chile took also a very long time to pass a new migration law even during the democratic period, longer than Brazil. But, in the meantime, during the years of (re) democratization of the country the different Presidents made important amendments, to modify the restrictive law of 1975, often through Presidential instructions. The situation was similar to the process experienced in Brazil after the dictatorship. However, in the Chilean case, it was mainly the result of the initiative of the different Presidents directed to migrants' regularization and the inclusion of certain measures oriented to protect some of their human rights.

The social democratic political alliance, Concertación, made three attempts at migrant regularization (Stefoni & Contreras, 2022). The first of them took place during the government of President Frei (1994–2000), when 22,000 individuals became regular and the management of public services was modernized. During President Lagos' government (2000-2006), inclusive sectoral public policies were designed with the aim of extending migrants' access to public health and education services.

In 2008, the second regularization process - covering 22,000 migrants- was designed, through the Presidential Instruction N°9, issued by Michelle Bachelet (2006–2010) during her first government. The first managerial migration program was created responding to the slogan "Chile, host country". During President Sebastián Piñera's first government (2010–2014), the

Refugee Law (Law 20,430) and Law 20,507 on the classification of crimes regarding trafficking were modified. An alternative law to that of 1975 was presented at the Chamber of Deputies, but it was blocked at that instance (Torres Matus, 2017). No radically regressive amendments, as those to be described for Brazil, were designed in Chile prior to passing the 2021 migration law. However, in the governments of Sebastian Pinera were issued that did involve important setbacks on migrants' human rights. The Presidential Instruction N 5 /2015, issued during Bachelet's second government (2014–2018), focused on 15 themes that represented a substantial advance towards the protection of migrants' human rights from the perspective of non-discrimination, equality with nationals and a vision closely aligned with the international standards ratified by Chile. However, in 2017, Congress dismissed the debate on a new migration policy.

The third intent of migrant regularization took place during the second government of President Piñera (2018–2022). In 2018, the President decided to “put the house in order” and, for example, demanded Consular visas for Haitians arriving as tourists (Morales, 2023). He ordered the limit of two years of residence in the country for migrants to apply for welfare benefits. Those policies were extremely contradictory as, for example, the visa of democratic responsibility (DRV), that allowed for the entry of a large number of Venezuelans into Chile, was issued using an online system and subsequently cancelled. This measure led to an increase in the amount of irregular migrants. An acceleration of the expulsion process of foreigners that had violated the law was also proposed. A massive expulsion of migrants then started on June 18 of 2018, continued during 2020 and 2021. It was undertaken and publicly shown by the media in ‘sensationalist’ ways; e.g. handcuffed migrants dressed in white uniforms boarding Aviation Force's planes.

The characteristics of the transition in Chile were quite different to those in Brazil, with constant setbacks towards privileging national security over the human rights of migrants. An exception, were the efforts made by President Michele Bachelet during her two terms in government. Particularly in the second term, one of the most consistent proposals towards the protection of human rights of migrants and refugees was presented but did not prosper in Congress.

3.1.3 Present migration laws

In the Brazilian Migration Law of 2017, finally the principles of human rights were incorporated, in accordance with the Brazilian Federal Constitution of 1988. This law represented an enormous advance in relation to the Statute of Foreigners and was globally considered quite an innovative law in comparison with those of other Latin American countries, at least, on paper. However, its text showed tensions and contradictions between securitization and the defence of the human rights of migrants.

Previously to the approval of the Brazilian Migration Law of 2017, different versions of law projects were discussed at the Senate. Disagreements between representatives included: migrants' forms of expulsion, deportation, repatriation, the role of border migrants, humanitarian visas and the notion of citizenship for migrants. Some representatives of the Chamber of Deputies supported more closely securitization measures to be carried out by the Federal Police, and others the protection of migrant rights, as expressed by civic organizations

working in favour of them. The negotiation of these differences delayed the approval of the final version of the law. The Federal Government tried to develop a unified action seeking a majority consensus around a proposal formulated at the Senate by Aluício Nunes in 2013 during Dilma Rouseff's government (2011-2016). Project 288 somehow became the precursor of the present 2017 Migration law, though it was subjected to major adjustments (Acero, 2025).

One positive measure considered within the new law involved a wide concession of humanitarian visas by ordinance for people involved in major disasters and human rights' violations. However, other measures were restrictive, such as : (a) the law widened the scope of situations to approve temporary residence and extinguished permanent residence for new migrants; (b) it maintained the granting of visas only at Brazilian Consulates abroad and the presentation of criminal records for the five previous years from migrants' countries of origin; (c) it restricted access to the formal labour market through the demand for new documentation; (d) bureaucratic processes made family reunion difficult and family was defined in traditional terms and not as kinship relationships- through Temer's vetoes; (e) the law lacked a gender approach, due to the pressure exercised by religious actors within Congress. This led to establish no special protection on the basis of gender persecution; (f) articles relating limiting migrants' entrance, repatriation and deportation took up a lot of space in the law project; and (g) the conditions to acquire citizenship were complex and varied according to the definition of a new hierarchy of migrants.

Notwithstanding, many changes were made in the new law that reversed some aspects of the old legislation, in relation to the application of new principles and rules oriented to guarantee the subjective rights of migrants (articles 3 and 4). In spite of the closure of borders at the global level due to the Covid-19 pandemic, the protection of the human rights of migrants was partially adopted by the law. This represented a great conquest for activists, migrant movements and associations of civic society that were well articulated and mobilized intensively. However, the hard core of the Nation-State actors remained; it submitted migrants to its discretion just for being foreigners. The principle of searching or attaining social equality was more a claim than a reality (Minchola, 2020).

However, later on, the advances on human rights proposed by the initial version of the law suffered a number of setbacks. This was the result of the 18 vetoes formulated by President Michel Temer and others, by President Jair Bolsonaro. The most drastic new regressive measures included, among other: the elimination of the category of border migrant; clauses that accepted differential periods for application to citizenship for Mercosur inhabitants were done away with; the amnesty for those migrants that entered the country before July 2016 was discarded; the circulation of indigenous populations in their traditional territories was banned; the rights of tourists were also limited and migrants' application for State positions and public careers was prohibited.

During President Bolsonaro's regime the securitization aspect of the law became even stronger. One of the first measures he took was Brazil's withdrawal from the United Nation first inter-governmental binding agreement on migration: The Global Compact for Safe, Orderly and Regular Migration (GCM, 2018) or Pact of Marrakesch of the United Nations Assembly. Furthermore, in 2019 he signed the widely controversial Decree No. 666 designed by the Ministry of Justice and Security that referred to migrants as "dangerous people". This decree

also regulated processes of expulsion, repatriation and impediment to the entry of migrants, and gave absolute power on decision-making on these issues to the Federal Police. Later on, when the Venezuelan humanitarian crisis became stronger, between 2018 and 2019, its management was trans passed to the military forces, and some of the migrants were concentrated in hybrid refugee camps controlled by the military forces (Machado & Vasconcellos, 2022). Finally, he restructured the role of the CNIg reducing the participation of civic society and including representatives from the Federal Police. For example, it postponed the regulation of humanitarian visas - an important advance in the new initial formulation of the law of 2017 - for an uncertain future (Ribeiro de Oliveira, 2017).

These actions and others were justified as questions of security, sovereignty or national interest. Migrants were left in a precarious condition in respect to the power of the state (Redin, 2015). This regulation was widely considered by scholars and social movements as anti-democratic.

However, in the present third government of President Luis Ignacio da Silva a higher profile of Brazil in regional migration fora continued being developed – even more, than in his other two terms in government. Lula promoted regional and multilateral solutions to common challenges in the area of migration, in line with Brazil’s foreign policy priorities. His first measure on foreign migration policy was to re-join the international Global Compact Convention (GCM).

Moreover, at present, a National Policy on Migration, Refuge and Statelessness (PNMRA), which also considers internal migrants, foreseen in the initial 2017 Migration Law is being developed. The Ministry of Justice and Security has created a Working Group for its design that engages a wide range of social actors. The Group’s aim is to generate norms for the organization of initiatives that can guarantee this policy’s management in a decentralized, inter-sectoral and participative manner and include the main proposals approved by COMIGRAR and by the National Health Council 17 th. Conference - to be discussed in the next section.

In Chile, the new Law on Migration (Law 21.325), which came into effect on February 12, 2022 (SERMIG, 2023), constitutes the beginning of a new institutional and administrative framework that continues to be co-constructed by a range of social sectors (Observatorio de Migraciones y Movilidad Humana, 2023). This law is the result of several public negotiations undertaken to balance different ideological and political perspectives concerning the regulation of migration (Caro & Quitral, 2023).

In the law, the state commits to the development of a National Migration and Foreigners Policy (PNME) in the future. As of December 26, 2023, the different state agencies are required to adhere to it. The goal is to design an orderly, secure, and regularized migration that contributes to the country’s development, considers the needs of the local territories, and fosters the harmonious integration of migrant persons while respecting their rights (SERMIG, 2024). The law created new institutions, such as, the National Service for Migration (SERMIG) and the Council for Migration Policy. The last, is a multisectoral space responsible for assessing the Head of government (article 155). The creation of a National Registry of Migrants was defined (article 160) and it will be formed by representatives of different Ministries, as well as, the presidents of Municipalities. Regional and municipal governments will have their own programmes on migration and specialized offices that would work in close collaboration with

migrant populations. However, there is an absence of any reference to the integration into the key agencies of representatives from migrant collectives or civic organizations working in favour of migrants (Acero & Zuleta Pastor, 2025 c).

The general principles about migrants/refugees outlined in the law include: integration, legal equality, inclusion and non-discrimination; the prevention of xenophobia, racism and any form of discrimination (article 13); the non-criminalization of migrants (establishing that irregularity is not a penal infraction and that collective expulsions are prohibited); and concessions of humanitarian visas that are left in the hands of the Ministry of Exterior Relations (article 29). However, it does not allow migrants to obtain working visas once they are already in Chilean territory.

The policy focuses on two different topics, the first of which relates to increase the capacity to control the country's frontiers more efficiently and the second of which aims at improving access to the documentation required for the regularization of the migrant population already living in the country. It makes the claim of paying particular attention to human and children's rights, gender, and interculturality (Acero & Zuleta Pastor, 2024).

According to the Jesuit Service for Migrants and Refugees (SJM, 2024), the law proposes some innovative measures, many of which will be discussed in the next section. However, the law also presents some issues of concern because they show a degree of continuity with the past Statute of Foreigners, such as: (a) two-thirds of the guidelines expand the causes for migrant expulsions undertaken under the authority of SERMIG, an administrative institution; (b) it allows local police to revoke temporary visas due to misdemeanours, and to extend the prohibitions of people's entry into the country; (c) it establishes a compulsory biometric enrolment for irregular migrants that does not propose a clear pathway towards obtaining permanent residency. Without this enrolment, migrants cannot access the formal labour market and other welfare services ;(d) it allocates more resources to border security than to social programs and the protection of human security; and (e) it expands the frontier zone in 10 km - a potential source of conflict with neighbouring countries.

More restrictive measures include: prohibitions of entry for people with criminal records or involved in delinquency (article 32), conditions for transitory residence (article 45), and requisites to obtain permanent residence status (articles 76 to 96). It also establishes the impossibility of obtaining temporary residence within the country by modifying the status of tourist from within Chile.

4.0 MIGRANTS' HUMAN RIGHTS

This section extends some of the human rights' measures and policies for migrants and refugees discussed in previous sections of the article.

The Brazilian Statute of Foreigners of 1980 was based solely on national security and disregarded human rights altogether, but the State had no social legitimacy to issue it. During the transition period between laws, some of the rights of migrants were slowly and selectively incorporated. One important event oriented in this direction was the organization of the First National Conference on Migrants, Refugees and Stateless People (COMIGRAR) held in 2014 during President Dilma Rouseff's government. This initiative was the result of the massive

increase in migrant flows and the change in their composition plus the pressure exercised by civic society organizations. It was also a way to institutionalize the relationship between government and society. One of its objectives was:

“To advance in the transversalization of the migration and refugee themes within public policy in order to favour the engagement of migrants and migrant collectives in all the processes that led towards the main National Conference” (Granja, 2014, p. 12).

The Conference intended mapping the demands and desires of migrant communities towards greater equality with nationals, and develop measures to be included within the National Health System (SUS). In the final Migration Law of 2017 (articles 3 and 4), the principles of human rights for the protection of migrants and refugees were incorporated, in accordance with the Brazilian Federal Constitution of 1988. In article 3, for example, it is specified that the new policy is ruled by: I. the universality, indivisibility and interdependence of human rights; II. the rejection and prevention of xenophobia, racism and any other form of discrimination and III. the non-criminalization of migration. The law also guarantees equal and free access of migrants to public services, social benefits, public goods, education, legal assistance, work, housing, banking services and security. In one key article (n. 14), the concession of humanitarian visas to all migrant/refugee nationalities in need of them and to stateless people was approved- as an extension of those first only granted to Haitians and then, to Venezuelans. This type of visa had been already granted previously, through ordinances, as a temporary shelter visa to those who confronted institutional instability, armed conflicts, environmental disasters, serious violation of human rights and the like, and its requirement did not need to be proved by the applicant in a case-by-case modality.

These changes were obtained as a result of the pressure exercised through the articulation and intensive mobilization of members of organizations of civic society and migrant/refugee collectives. Some aspects of the old legislation were reversed in the spirit of the new law. However, the explicit intention of searching for or attaining social equality for migrants' social insertion was more a claim than a reality (Minchola, 2019).

According to Redin (org.) (2020) and the United Nations High Commissioner for Refugees (UNHCR), the policy of control was maintained within the discretionary realm of public administration, and this still constitutes an open dilemma. The law did not recognize the human right to migrate as a right – a right to enter a country and stay.

The law of 1975 in Chile recognized practically no human rights for migrants. For example, it did not even refer to migrants' right to healthcare nor did it mention other human rights, such as education, housing, and access to justice (Vial, 2015). The treatment of present migrants in Chile (versus settlers recruited historically by the State) has been subjected to successive forms of discrimination. In recent years, this discrimination has become more acute, with the migrant person publicly represented as a social threat (Stang, 2016; Stefoni & Brito, 2019; Finn & Umpierrez de Reguero, 2020).

In Chile, the new Law on Migration (Law 21.325) presents innovative measures, as commented before, when discussing the SJM Report (2024). A key policy measure designed is the approval of humanitarian visas for survivors of gender violence and victims of trafficking, without them

having to appear in court. Other innovations include: (a) an emphasis upon cultural mediation between municipal public agents and social leaders to mitigate conflicts and social discrimination; (b) the facilitation of access to the public health system by irregular migrants; (c) the publication of clear rules for the validation of foreign university degrees; (d) 'regularization by grace' in cases of family reunification, labour relations, and for women engaged in caregiving; (e) the creation of humanitarian visas for migrant children and adolescents, even for those whose caretakers are undocumented; (f) complementary protection is made available to foreigners whose requests for refugee status have been legally dismissed; and (g) the acceptance of human mobility due to environmental crises.

The new law presents an advance in human rights, for example, the recognition of the rights of migrant people following the standards of international human rights. It also recognizes the value of the specific culture of migrants and proposes special care for women, children and adolescents. It also mentions the promotion of multiculturalism (article 6), avoiding any criminalization of the migrant person, including among those people who are undocumented (article 9). In several of its articles, equal treatment between migrants and nationals is proposed, the right to access work, public education and health, as well as, to their protection by welfare policy. However, the guarantee of certain fundamental rights for migrants and their children, such as access to health, education and social security are granted only after a minimum of two years of regular residence. It also approves the movements of indigenous people between frontiers, whose territorial space surpasses the political limits of Chile (article 52). It establishes the modernization of the forms of approval of the academic degrees and credentials acquired by migrants abroad. Migrants with permanent residence can vote and be militants of political parties but they cannot compete for public posts. However, the bureaucratic barriers for a more expedient and quicker regularization of migrants were not removed by the law.

Restrictive measures in the law included: prohibitions of entry for people with criminal records or involved in delinquency (article 32); conditions for transitory residence (article 45), and requisites to obtain permanent residence status (articles 76 to 96). The new law also establishes the impossibility of obtaining temporary residence within the country through the modification of the tourist status from within Chile.

4.1 Engagement and Social Participation

In Brazil, the Second Conference of COMIGRAR took place in 2024, ten years after the first one, and had the participation of 700 individuals- among them, 300 migrant/refugee delegates- to debate the topic of "Citizens in Movement". Six thematic axes for discussion were previously defined: Socioeconomic insertion and the promotion of decent work; Confrontation of the violations of rights; Governance and social participation; Migration and documental regularization; Inter-culturality and Diversity. Two working groups per theme were organized. Twenty-four proposals were sent to the Plenary session. Issues debated included: inclusive education, universal access to health, eradication of slave work, simplification of the regularization processes, revalidation of foreign degrees, the creation of data platforms and institutional governance. Later on, some of these proposals were favourably voted at the 17 th. National Conference on Health held by the National Council for Health (CNS).

Though the convocation to Conferences was largely a top-down initiative, it contributed to letting the voices of migrants be publicly heard and to their engagement with the debates of proposals that might integrate the future National Plan on Migration.

As stated before, there was no such level of institutionally planned migrant and refugee public engagement in the design of the last migration law in Chile.

5.0 CONCLUSIONS: Selective Comparisons

The recent migration laws of Brazil and Chile converge and diverge in important ways. Both the last laws converge in having been built over an extremely long period of time; one that involved numerous negotiations between conflicting interests at Congress and among social stakeholders. The process towards law approval has been one of advances and setbacks, depending largely on the government in turn. Both recent laws converge in the integration and formalization of previous measures, mainly on migrants' human rights, gradually granted within ordinances and exceptions during the transition period after dictatorship.

Both countries' laws present a certain degree of continuity with the past laws issued during dictatorships and based upon securitization, though this is especially the case of Chile. Chile diverges from Brazil as recent initiatives to limit or deport migrants have been carried out. The Chilean programme of 2018 on a: "Humanitarian Plan of Orderly Return to their Country of Origin for Foreign Citizens", a general policy, though mainly applied for Haitians residing in Chile, is one extreme example of State actions involving camouflaged attempts at deportation of those nationals (Acero & Zuleta Pastor, 2025 b).

Both recent laws tend to include civic society actors, though in very different ways and degrees, i.e. with many variations. Public engagement is substantive in Brazil and oriented to the formulation of a new and more complete National Plan on Migration in the near future. Meanwhile, in Chile, law design involved only a semi-formal and selective public participation. This type of engagement was not institutionalized and was discontinued during policy implementation. The controversial biometric enrolment of undocumented migrants, without a clear horizon for future social integration, is an aspect only present in the Chilean law.

There are also many inconsistencies in the estimates on the number and profiles of the undocumented migrants residing in these countries. Data that shows changes in migration patterns and profiles is scanty, incomplete and fragmented and often lacks an intersectional approach, especially regarding race. However, this type of information is better centralized and systematized in Brazil, though only for approximately the last 8 years.

The SJM Report (2024), discussed in past sections of this article, suggests that the Chilean law needs policies, such as, a clearer definition and regulation of the administrative responsibilities of public agencies, as well as, the establishment of a permanent line of direct communication with migrants/refugees and their associations. It proposes updating the information at the different public websites and the design of nationwide public campaigns on migration and refuge, led by government authorities. Both suggestions could be extended to Brazil.

An important deficit in both countries' policies is the scarce training and capacity building on migration and refuge of public agents dealing directly with migrants/refugees, with some

exemptions at the provincial or State levels, as well as, the little public information available and the scarce public awareness existing on migration (Acero, 2025 b). The substantive qualitative role played by NGOs on migrant social integration often lacks public formalization and visibility, except during their participation at the COMIGRAR Conferences in Brazil. However, none of these laws, up to now, consider the conditions required to develop a mission-oriented migration policy nor has the coordination between public agencies been either substantive or agile.

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