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Migration Policies and Human Rights in Latin America. Progressive Practices, Old Challenges, Worrying Setbacks and New Threats



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Migration Policies and Human Rights in Latin America. Progressive Practices, Old Challenges, Worrying Setbacks and New Threats

Pablo Ceriani Cernadas¹

EXECUTIVE SUMMARY

In the field of migration policies from a human rights point of view, Latin America has increasingly become a peculiar region in the last 15 years. This assumption is based on the fact that the region has been experiencing a transitional phase which includes trends in diverse, including contradictory, directions.

On the one hand, a distinct note is the strong presence of the human rights narrative, which led to important improvements. Beginning with political and legal recognition of migration as a human right, during these years several positive legislative changes have been adopted, including equal protection of social rights of all migrants, non-detention based on migration status, due process safeguards and access to justice.

On the other hand, lack of effective implementation and pending legislative and policy changes depicted a decade full of deficits regarding the coherence between rhetoric and actual policies. Other structural challenges include widespread xenophobia throughout the region, lack of data for evidence-based policies, and absence of inter-institutional coordination aimed at ensuring comprehensive rights-based policies, among others.

In addition to such challenges, recent years have evidenced policy shifts in some countries that could be defined as worrying setbacks. Border militarization, immigration-detention practices, proposals for restricting social rights of undocumented migrants, among others, are among the new threats that tend to reverse some of the advances this region had made in previous years.

In this context, this Policy Paper examines whether the region is in time to prevent this regressive trend from deepening and, on the contrary, continues the transition that was expected to become a new paradigm on migration rights-centered governance model. Some policy options, including a set of strategies and initiatives, are proposed in order to address and/or reverse those threats and setbacks, as well as to strengthen migration policies directed to respect, protect, promote and fulfill the human rights of all migrants.

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INTRODUCTION

In a global context where migration has increasingly become one of the critical topics of policy discussions at local, national and international level, and in particular since the beginning of the current century, Latin American countries have played an interesting role in terms of policy decisions and political statements on the approach to be given to this structural and multidimensional phenomenon. One of the reasons for this assumption is that the majority of the countries have reformed their migration laws or adopted an entire new legal framework between 2002 and 2018. Secondly, these changes have been accompanied – in most of the cases – by a human rights discourse as the basis for those decisions, even when such modifications had not actually implied a substantive improvement in the recognition of migrants' rights in a progressive way.

The regional scenario on migration policies throughout the previous decade can be described as a complex transitional phase that is still in progress.² In this context, whereas many of the countries of the region have changed – either partially or fully – their migration policies, others have not done so. On the other hand, while the majority of those modifications represented a step forward in terms of human rights – although with a variety of scope and coherence – others moved in the opposite direction, and a number of countries have adopted partial, focalized changes.

In spite of the diversity of realities and the level of improvement in law and in practice of migrants' rights protection each country and sub-region, a distinctive note of the regional approach to migration in this period is a strong narrative based on human rights principles. The recognition of migration as a human right, political and legal positions on the non-criminalization of irregular migration, among others, evidenced that discourse orientation.

While ongoing discussions at various levels – political, social, academic – focus on the limitations, contradictions, outcomes and achievements of those policy and rhetorical changes, recent decisions and facts in some countries of the region may negatively impact the positive although multifaceted process initiated less than 20 years ago. Indeed, some recent policy reforms, legislative changes and proposals, as well as policy decisions in particular cases or in relation to new migration trends, could have led not only to the deepening of contradictions within such transition but, more importantly, to the modification of the main goals to be reached.

In this context, this Policy Paper aims at briefly describing some of the main current migration policy trends in Latin America.³ It includes a short summary of the main characteristics of the policy reforms that have been implemented in the region during that period, as well as the critical human rights' challenges associated to them. Taking into account the key policy trends, and in particular, some worrying modifications carried out more recently, including actual threats and setbacks on previous improvements, a set of policy proposals are highlighted.

Before looking in detail at the analysis of migration policies trends and challenges, the principal patterns of migration flows within, to and from the region are outlined, in order to provide general information on the context where these policies have been implemented.

BRIEF OVERVIEW OF MIGRATION PATTERNS IN LATIN AMERICA

As this paper aims to contribute to ongoing discussions among different stakeholders at global and inter-regional level, it is important to include at least a short description of the migration dynamics in Latin America.

First of all, it is worth underlining that migration patterns are not necessarily or strictly con-

2 Ceriani Cernadas, Pablo and Freier, Feline, *Migration policies and policymaking in Latin America and the Caribbean: lights and shadows in a region in transition* (Cantor, D., Freier, L. and Gauci, J. (orgs.). A Liberal Tide: Towards A Paradigm Shift in Latin American Migration and Asylum Policy-Making? London: ILAS, 2015).

3 The scope of the analysis of this paper is focused only on Latin American countries, namely, it does not address migration policies in Caribbean countries –with the exception of Dominican Republic–.

connected to policy trends, that is, migration policies are rarely based on the reality to be regulated but rather on a combination of data, myths, false representations and other factors, including political or economic interests. Nevertheless, and in particular due to recent changes (e.g. massive displacement from Venezuela), data should play a key role in every analysis directed to examine public policies and, more importantly, promote policy options for addressing issues, gaps and challenges.

There are several reports that have been depicting the main tendencies of migration within, from and to Latin America.⁴ Some of the longer-term migration patterns in the region are the following:

Intra-regional migration

- Migration to Argentina from Bolivia, Paraguay and Peru, in particular since the 1980s, although south-south migration flows to Argentina have been evidenced since the 19th century;
- Migration from Nicaragua to Costa Rica, another long-standing migration flow, both regular and irregular;
- Migration from Haiti to the Dominican Republic;
- Migration from Ecuador to Colombia, particularly linked to the displacement related to the Colombian armed conflict.

Inter-regional migration:

- Migration from El Salvador, Honduras, Guatemala, and Mexico to the United States of America, currently amounting to approx. 11 million undocumented migrants;⁵
- Migration from other countries of the region to the US;
- Migration from several Latin American coun-

tries to Italy and Spain, mainly from Argentina, Bolivia, Colombia, Ecuador, and Peru, in numbers and under circumstances related to either various economic, social and political crises in the countries of origin, or to family reunification and other push/pull factors;

- Chinese migration to Argentina, Chile and other countries.

In addition, there are other migration flows that have either started or increased since the first decade of this century. Some of the main recent patterns are the following:

Intra-regional migration

- Migration from Haiti to South America (Argentina, Brazil, Chile), in particular after the 2010 earthquake. Recently, some of those migrants have been moving north, by land, in the direction of the US;
- Chile has increasingly become an important receiving country for migrants from different countries such as Bolivia, Peru, Argentina, and more recently, Colombia, Cuba, Dominican Republic, Haiti, among others;
- Increased migration to Argentina from Colombia, Dominican Republic, and Haiti;⁶
- Panama has also become a receiving country from Colombia and Central American countries such as El Salvador, Honduras, and Guatemala.

Inter-regional migration

- Migration from several West African countries (e.g., Senegal, Angola, Nigeria) to Argentina, Brazil and Colombia, among others;
- Migration from several African and Asian countries to the US, entering Ecuador and then moving north by land;
- Throughout the last decade, a returning flow

4 See CEPAL. *América Latina y el Caribe: Migraciones internacionales, derechos humanos y desarrollo*. Martínez Pizarro (ed.). Santiago de Chile, 2008. IOM. *Recent Extra-regional, intra-regional and extra-continental Migration Trends in South America*. South American Migration Report No. 2. Buenos Aires, 2017. OAS. *International Migration in the Americas*. Fourth Report of the Continuous Reporting System on International Migration in the Americas (SICREMI). Washington DC, 2017.

5 According to the Pew Research Center, while about 25% of all immigrants in the US were unauthorized by the end of 2017, in the case of migrants from the Northern Triangle of Central America (El Salvador, Guatemala and Honduras), undocumented migrant figures rise to 55%. See online at <http://www.pewhispanic.org/2017/12/07/rise-in-u-s-immigrants-from-el-salvador-guatemala-and-honduras-outpaces-growth-from-elsewhere/>.

6 See IOM, op. cit., 2017.

has started from Europe and the US to countries of origin, such as Argentina, Colombia, Ecuador, Peru, and Mexico, in spite of the fact that from some of those countries migrants continue to move north due to several factors. In relation to this aspect, it is worth noting the impact of a large number of migrants from Latin America that are forcibly returned to their countries of origin, not only from the US and European countries but also from the region, e.g. from Mexico to El Salvador, Guatemala and Honduras.

Last but not least, the more recent and major change in migration trends in the region is undoubtedly the displacement from Venezuela which has been increasing in recent years.⁷ More than 1.5 million Venezuelans are estimated to have fled the country between 2015 and the end of 2017.⁸ It is an unprecedented scale of migrants within South America, especially considering the short period of time. According to estimates, by the end of 2017, the main destination countries of Venezuelans within the region would be the following⁹:

- Colombia: 600,000
- United States: 290,000
- Chile: 120,000
- Argentina: 57,000
- Ecuador: 40,000
- Panama: 36,000
- Brazil: 35,000
- Mexico: 32,500
- Peru: 27,000
- Costa Rica: 9,000
- Uruguay: 6,000

In spite of those numbers, it is important to note the existence of considerable data gaps regarding the Venezuelans in the region, in par-

ticular regarding migrants in an irregular situation. It is also worth noting that the first months of 2018 are showing a rapid growth of these flows in many countries of the region. This unprecedented context may also immediately affect policy discussions and reforms in some of the countries currently receiving large numbers of migrants and asylum seekers from Venezuela.

MIGRATION POLICIES AND HUMAN RIGHTS IN LATIN AMERICA: A REGION IN TRANSITION, FORWARD OR BACKWARD?

Migration policies in Latin American countries at the turn of the century could be described by two clear characteristics. Firstly, the fact that (with few exceptions) migration was not at the center of the political and policy agenda, but rather far from it. Secondly, numerous existing legislative frameworks were not only outdated – they had been adopted decades before – but, more importantly, were framed by a national security approach and contradicted basic human rights principles.

Immediately after that period, this scenario began to gradually change, in particular since 2002/3. This starting point is based on two paramount policy changes that took place in those years. Firstly, the December 2002 approval of the MERCOSUR Residence Agreement. To date, this constitutes one of the most important regional legal instruments that not only influenced policy changes in many countries but also, more importantly, is a clear example of the principle of realism within migration policies, although some reasonable criticism has been made on its limitations from a human rights perspective.¹⁰

Second, 2003 marked the first legislative

7 IOM, op.cit., 2018. IOM. *Tendencias migratorias en América del Sur. República Bolivariana de Venezuela*. Febrero 2018. UNHCR. *Venezuela Situation. Responding to the Needs of People Displaced from Venezuela*. Supplementary Appeal January-December 2018. Geneva. March 2018.

8 International Organization for Migration (IOM). *Plan de Acción Regional para el fortalecimiento a la respuesta de los flujos migratorios recientes de nacionales de Venezuela a América del Sur, Norteamérica, América Central y el Caribe*. Buenos Aires. 2018.

9 IOM, op. cit. 2018.

10 As this agreement was implemented mainly in countries that recognized that migration is a universal human right, the positive and critical benefits from the MERCOSUR Agreement on the entrance and permanence in a territory, those migrants coming from outside the regions have been facing a number of obstacles for actually exercising such human

COUNTRY	MIGRATION LAW ADOPTED
Argentina	2003
Bolivia	2013
Brazil	2017
Chile	1975 (currently under review)
Colombia	2004 ¹¹
Costa Rica	2010
Dominican Republic	2004
Ecuador	2008
El Salvador	1958 (currently under revisión) ¹²
Guatemala	2016
Mexico	2011
Nicaragua	2011
Paraguay	1996 (currently under review)
Panama	2008
Peru	2017
Uruguay	2008
Venezuela	2004

reform in the region that left the previous migration policy paradigm—based on a national security approach—behind. The Argentinean migration law approved by the end of that year can be singled out as the turning point of migration policy discussions within the region. Since then, numerous countries of the region have approved new migration laws (see chart below). While a few of them could not be registered as an improvement in terms of migrants' rights (e.g., the case of the Dominican Republic), the majority represent a step forward in the recognition of the human rights of migrants. Nevertheless, it is important to note that there are several and substantive differences among them with regard to the scope of human rights' standards that each law actually acknowledged.

In terms of the scope of human rights pro-

tection in these pieces of legislation, a classification carried out a few years ago is still valid. As recognition of migrants' human rights varies significantly in Latin American immigration laws, there is a divide between a group of states that have recently modified their immigration laws and the countries that have not yet reformed their regulatory framework.¹³ It is important to note that the first group represents a heterogeneous mix regarding the content, orientation and reach of legislative reforms. The second one also includes diverse situations, as some progressive policy measures have been implemented in spite of the lack of legislative reform (e.g., El Salvador). A third group includes countries where migration reforms are currently under discussion.

In addition, in the course of the previous de-

right recently recognize by several countries.

11 Complementary laws were adopted in 2009, 2011, among others.

12 It is worth noting that El Salvador, as other countries of the regions, adopted new legislation in some of the aspects of human mobility, in particular directed to promote the rights of nationals that have migrated to other countries.

13 Ceriani Cernadas and Freier, op. cit. 2016; Ceriani Cernadas, P. *Luces y Sombras en la legislación migratoria latinoamericana*. Revista Nueva Sociedad, Nro. 233, Mayo-Junio 2011.

cade, policy discourse on migration has become increasingly progressive and human rights-centered. As Acosta and Freier affirmed, liberal discourse of universally welcoming all immigrants, irrespective of their origin and migratory status, has replaced the formally restrictive and securitized selective immigration rhetoric¹⁴. Both in policy and discourse shifts, it should be noted that the South American sub-region was the one that took the lead in immigration policy liberalization. In the same direction, the Declaration that those States approved annually at the South American Conference on Migration clearly evidenced that approach.¹⁵

In the context of these policy and legal reforms that have taken place in several countries of the region, important advances have been implemented. In particular, South America adopted legislative frameworks “heavily anchored on the respect of human rights, the principle of nondiscrimination, and the understanding that crossing a border should not necessarily constitute a loss of rights”¹⁶. Among the key human rights’ improvements, it is worth noting the following:

- Recognition of the Human Right to Migrate in some of the new migration laws;¹⁷
- Equal protection of social rights (health, education, labor rights, etc.) regardless of migration status in most laws adopted in the region;¹⁸
- Decriminalization of irregular migration in all legislative reforms;
- Due Process Guarantees, including access to justice;
- Forbidding migration-related detention or

accepting this practice as a last resort or exceptional measure;¹⁹

- Creating pathways to regular status as a priority response to irregular status. This approach included both Temporal Regularization Programs and permanent avenues for access to a residence permit based on different grounds (nationality of origin, labor relation, family ties, humanitarian reasons, among others);
- Initiatives directed to promote regional freedom of movement, as well as regional citizenship (e.g., MERCOSUR and UNASUR).

These and other policy changes show that important progressive, if not unprecedented in some cases, language was included in the new pieces of legislation that a group of Latin American countries approved in a global context, which has been overall heading in a different direction. It is worth noting that in these policy-reform processes, a critical role was played by civil society organizations.²⁰

Nevertheless, these policy and discursive changes have not always led to effective human rights protection. First of all, because in some cases discursive liberalization “has found partial translation into immigration laws and policies, but, contrary to the universality of rights claimed in their discourses, governments reject recently increasing irregular south-south migration from Africa, Asia and the Caribbean to varying degrees”²¹. Furthermore, a number of implementation challenges remain pending in those countries that made substantive policy reforms.

14 Acosta, Diego and Freier, Luisa (2015). *Turning the immigration policy paradox upside down? Populist liberalism and discursive gaps in South America*. *International Migration Review* 49 (3). pp. 659-696.

15 See IOM. *South American Conference on Migration 2000-2015*. Buenos Aires. 2016.

16 Acosta, Diego. *Free Movement in South America: The Emergence of an Alternative Model?* Published in *Migration Information Source, The Online Journal of the Migration Policy Institute*. August 23, 2016.

17 Argentina, Bolivia, Ecuador, Guatemala, Peru, and Uruguay.

18 Argentina, Bolivia, Brazil, Ecuador, Guatemala, Mexico, Peru, and Uruguay.

19 Ceriani Cernadas, P. *Back to Basics? The limited use of immigration detention in South America: an interpretation based in human rights treaties and principles*. Flynn and Flynn (eds.). *Challenging Immigration Detention. Academics, Activists and Policy Makers*, Edward Elgar Publishing, 2017, pp. 239-264.

20 Ceriani Cernadas, P. *Kein Mensch ist Illegal. Ein Einblick in das innovative argentinische Einwanderungsrecht (No Human Being is Illegal. Notes on the Innovative Argentinean Migration Law)*. In *Kulturaustausch, Neuland*, No. II, 2016. Ceriani Cernadas, P. *Improving Migrants’ Rights in Times of Crisis: Migration Policy in Argentina since 2003*. In Diego Acosta Arcaza and Anja Wiesbrock (Eds.). *Global Migration: Myths and Realities*, Praeger, 2015. Vol. 2, p. 129-157.

21 Acosta and Freier, op. cit., 2015.

A number of recommendations by United Nations human rights bodies²² and the Inter-American Commission and Court of Human Rights,²³ highlight those gaps. Some of these issues are the following:

- Deficits in implementation;
- Lack of information and training programs on migrants' rights;
- Extended xenophobia in receiving societies;
- Restrictions in practice to accessing social rights, including labor rights;
- Contradictions between laws and policies;
- No institutional reform that would lead to inter-institutional, comprehensive migration policies;

More importantly, the positive steps – in spite of the remaining challenges – have coexisted with policies, laws and/or practices that constituted grave human rights abuses. Although these challenges could be identified in the entire region, there have been substantive differences among the sub-regions. Many complementary factors could explain the difference of migration policy trends, for instance, between South America, on the one hand, and Central America and Mexico on the other. Among them, it was noted that South American governments have enjoyed significantly more autonomy in the development of their immigration policies than Central American and Mexican governments, as transit migration towards the US-Mexican bor-

der leads to US diplomatic pressure to maintain restrictive policies.²⁴ In this context, some of the serious human rights' constraints have been the following:

- A strong security approach to migration policies (e.g., Mexico) or in legislation (Chile; Brazil until 2017);
- Arbitrary Detention policies (Mexico) and practices (Ecuador until 2017);
- Outdated laws that have not been changed yet (Chile, Paraguay) or were only changed very recently (Brazil and Ecuador, both in 2017);
- Arbitrary Deportation policies and practices (e.g. Mexico, Dominican Republic);²⁵
- Restriction on access to nationality and other basic rights due to migration status (e.g. Dominican Republic);²⁶
- Forced disappearances and Massive killings of migrants (Mexico);²⁷
- Detention of thousands of migrant children every year (Mexico);²⁸
- Deficits in the protection of children in the context of migration.²⁹

Notwithstanding these policy trends in the region, it could be argued that the latest tendencies show important shifts not only in policies and practices, but also in the discourse behind those changes. Recent policy decisions evidence some regressive shifts in countries recognized by their progressive rights-based migration pol-

22 UN Committee on Migrant Workers. Concluding Observations to the following Latin American Countries: Belize (2015), El Salvador (2014), Honduras (2016), Mexico (2017), Nicaragua (2016), Peru (2014), Uruguay (2014).

23 Inter-American Commission of Human Rights (IACHR). *Human Mobility. Inter-American Standards*. Washington DC. 2016.

24 Ceriani and Freier, op. cit. 2015.

25 See, e.g., Inter-American Court of Human Rights. *Case of Expelled Dominicans and Haitians v. Dominican Republic*. Judgment of August 28, 2014. See also UN Committee on Migrant Workers. *Concluding observations on the third periodic report of Mexico*. CMW/C/MEX/CO/3; 27 September 2017.

26 Open Society Foundation. *Dominicans of Haitian Descent and the Compromised Right to Nationality*. Report presented to the Inter-American Commission on Human Rights on the Occasion of its 140th Session. 2010.

27 Fundación para la Justicia et al. *Informe alternativo dentro del proceso de revisión periódica del Comité para la protección de los derechos de todos los trabajadores migratorios y de sus familiares respecto de México*; Ciudad de México, 2017.

28 See UN Committee on Migrant Workers. *Concluding observations on the third periodic report of Mexico*. CMW/C/MEX/CO/3; 27 September 2017, paragraphs 37, 38, 55 and 56.

29 UNICEF and Universidad Nacional de Lanús. *Estándares jurídicos básicos aplicables a niños, niñas y adolescentes migrantes en situación irregular*. Panamá, 2009. See also Ceriani Cernadas, P., Musalo Karen, and Frydman Lisa. *Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges*. Available at: <http://hrchildmigration.blogspot.com/>. 2015.

icies. One of the distinctive cases is Argentina, the major receiving country of intra-regional migrants in South America. In January 2017, President Macri modified the legislation through an *Executive Decree of Necessity and Urgency*. This decision, which affected several rights and due process guarantees recognized in the 2003 law, was taken along with several public allegations by representatives of the government on the existence of an emergency due to the high rates of serious crimes committed by migrants, although official statistics did not show that problem at all.³⁰

Other examples of recent decisions in the same direction would be:

- The law and other proposals announced by the new government of Chile (2018)³¹;
- In Brazil, the Executive Vetoes and regulations that severely restricted migrants' rights that had been included in the new migration Law (2017);
- Arbitrary and militarized responses by the Nicaraguan government at the border with Costa Rica (2016);
- Increasing militarization of the border with Venezuela by both Colombia and Brazil (2018);
- The extension of a militarization approach to irregular migration at the southern States of Mexico (from 2014 onwards);
- Arbitrary deportation of Colombian migrants and refugees by the Venezuelan government in 2015;
- The near stagnation of the regional processes – e.g. MERCOSUR and UNASUR – directed to create a freedom of movement zone as well as a regional citizenship status in South America.

- Massive denationalization process against people of Haitian descent in the Dominican Republic (2013 onwards).³²

Migrant rights' rhetoric used until recently by many countries of the region that hasn't led to actual policy changes based on such narrative were conceptualized under a populist strategy.³³ Nevertheless, it is reasonable to argue that among the current challenges in some countries would be the (re)appearance of a populist narrative in the opposite direction, namely, in the path widely evidenced in other regions. Certainly, a critical issue nowadays is the xenophobic or anti-immigration populist rhetoric increasingly used by some new Latin American governments, e.g., Argentina, Brazil, Chile. More importantly, these xenophobic discourses have been fueling the latest regressive changes in the region, as occurred in Argentina, which prevented progressive policy reforms from having more impact.

POLICY OPTIONS

In this context, a set of policy options could contribute to strengthening progressive migration policies already existing in the region, as well as to reducing as much as possible the impact of recent regressive trends. Notwithstanding the fact that there would be a large amount of policies and measures to be taken, some of these alternatives and strategies could be the following:

First of all, *it is paramount that States policies and discourses coherently follow all the regional principles and commitments they have formally agreed on during the last 15 years*, such as:

30 Morales, D., Ortiz, R., Jaramillo, V. y Trovato, M. *Migrantes: De la protección a la criminalización*. In CELS, *Derechos Humanos en Argentina*. Informe 2017. Buenos Aires, 2008.

31 See Acosta, Vera and Brumat. *The New Chilean Government and its Shifting Attitudes on Migration Governance*. In https://blogs.eui.eu/migrationpolicycentre/new-chilean-government-shifting-attitudes-migration-governance/amp/?__twitter_impression=true.

32 IAHRC. *Denationalization and Statelessness in the Dominican Republic*. Report "Situation of Human Rights in Dominican Republic". Washington DC. 2015.

33 See Acosta, Vera and Brumat. *The New Chilean Government and its Shifting Attitudes on Migration Governance*. In https://blogs.eui.eu/migrationpolicycentre/new-chilean-government-shifting-attitudes-migration-governance/amp/?__twitter_impression=true.

- MERCOSUR Santiago Declaration on Migration Principles (2004);
- Managua Regional Declaration on Unaccompanied Children (2014);
- CELAC Special Declaration 9 on the Protection of Migrants in Latin America and the Caribbean (2016);
- Declaration of the South America Conference on Migration (2000 onwards).

Key stakeholders, including members of national Parliaments, migration and foreign affairs authorities, should ensure that these international instruments guide migration policies and practices. In the same direction, migration regional processes based on those principles should be strengthened (e.g., MERCOSUR and UNASUR initiatives on regional citizenship and freedom of movement). *Civil society organizations, as well as international agencies that participate in regional processes (e.g., IOM) should reinforce their initiatives aimed at preventing policies that could leave those standards and principles behind.*

In regard to legislative frameworks at local and national level, it is critical that migration and related laws ensure a human rights approach in line with not only regional guidelines on migrants' rights but also with all human rights international treaties ratified by each State in the region. Political parties from different wings, in particular those behind the progressive policy changes mentioned above, should be committed to sustain them, reverse negative shifts and prevent regressive modifications. *Serious, evidence-based discussions among every key stakeholder should be promoted in order to discourage legislative amendments based on myths or prejudices.*

Civil society actors, including migrants' associations, academic institutions, trade unions, faith-based organizations, in partnership with international UN agencies and other stakeholders, should advocate for policy reforms aimed at ensuring an inter-institutional approach to migration policies, in order to comprehensively address the multidimensionality of migration. Regional principles and guidelines already adopted by Latin American States, as well as resolutions approved at United Nations Level – in-

cluding the New York Declaration for Migrants and Refugees in September 2016 – have repeatedly called for comprehensive, rights-based migration policies, and these arguments should be raised within such advocacy strategies.

In the field of migration policy reforms aimed at fulfilling migrants' rights and promote social integration, local governments can play a critical role. Therefore, *local governments and political forces, as well as civil society organizations could develop a number of initiatives aimed at including migration (and migrants' rights) as a cross-cutting issue in several policies on the local level.* In addition, migrants' associations and social and political partners could promote reforms aimed at guaranteeing migrants' right to participate in local elections, as a basis for an inclusive and wide citizenship that could frame intercultural integrated societies. Recognizing migrants' political rights would also contribute to preventing xenophobic and regressive policy changes.

Both local and national governments, in partnership with academia, civil society and other partners, should strengthen policies aimed at preventing xenophobia at every level, including policy discussions and electoral strategies. Among other initiatives, *Ministries of Education should review school programs in order to not only prevent xenophobic bullying at schools but also promoting intercultural integration in the long term.* Moreover, representatives of media enterprises could develop and endorse guidelines for a responsible treatment and narrative on migrants and refugees.

On the other hand, *current governments should commit to design and effectively implement public policies aimed at collecting qualitative and quantitative data aimed at ensuring more evidence-based policies, aimed at fulfilling migrants' rights, as well as preventing policies based on myths and false representation of migrants.* It is worth noting that there is policy-based evidence on the positive impact of progressive policy changes already implemented. Academic institutions, as well as root-based organizations, could play an important role in these initiatives.

Among other policy actions to be developed, *it is paramount that Latin American States commit to adopting a Plan of Action aimed at address-*

ing—in the short and long term—the root causes of migration from and within the region. This planning, which should include sub-regional dimensions, could lead to comprehensively tackle all dimensions of migration, and subsequently, to achieve the objectives not only based on policy principles and human rights rhetoric that had been characterizing the States in the region. Also, it would coherently contribute to reach the 2030 Sustainable Development Goals in every aspect related to migrants and, therefore, to the living conditions of people in general in both their countries of origin and destination.

CONCLUSION

Until very recently, it was underlined that although important cross-country differences existed, there had been significant change in the immigration discourses and policies of Latin American countries in the past decade, with a clear tendency towards abandoning the notion of immigration as a problem or threat, and towards understanding migration in the context of human rights. While it was wondered whether one could speak of a true paradigm shift in Latin American immigration policies, it could be too early to answer that question conclusively due to existing challenges, contradictions and pending reforms.³⁴ Answering that query nowadays might even more difficult than before.

It is unquestionable that there is a long list of progressive migration policy shifts that have taken place in Latin America in comparison not only to other regions but also to previous policy and legal frameworks in the previous century. However, considering all the pending policy reforms and, more importantly, the more recent setbacks and regressive measures, it is worth asking also if one could talk about a missed opportunity for setting up a new policy paradigm on human mobility based on human rights.

On a positive note, it is important to highlight that many positive changes remain alive. Progressive legislation in many countries is still there, several regional agreements are still in force, and the human rights international nor-

mative framework is formally part of the higher legal pyramid of the majority of the countries. A practical example of this progressive legal and policy basis is that in the context of massive displacement of Venezuelan citizens, no country developed or proposed responses that could include, for instance, detention centers or collective expulsions, as evidenced in other regions.

On the other hand, the transition of migration policies has been coexisting with long-term challenges and gaps, and more importantly, setbacks and new threats regarding both migration patterns and policy changes. In a region that is dealing as well with numerous socio-economic crises, including political instability, it is likely that those kinds of regressive trends increase.

In sum, it would seem that the Latin American region is nearing a crossroads in the field of migration policies. Would it leave behind the priorities and tendencies from recent past in terms of human rights protection as the cornerstone of migration policies? Would Latin American countries endorse the same policy priorities as other regions, namely, a restrictive approach that has contributed to legitimate numerous arbitrary human rights' restrictions based on nationality and/or migration status? Which direction will migration policies in the region take? Can we still argue that the region is on the road to build a new paradigm of migration policies? These and other questions should be discussed with as many stakeholders as possible.

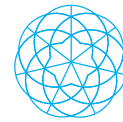
³⁴ Ceriani and Freier, op. cit., 2015.

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