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Felipe González Morales

Special Rapporteur on the human rights of migrants
United Nations Organization
Geneva, Switzerland

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The [Center for Law, Justice and Society \(Dejusticia\)](#), based in Bogotá, Colombia and dedicated to the protection of migrants and refugees' rights through research, litigation and advocacy, would like to present our contributions to the questionnaire on how to expand and diversify regularization mechanisms and programs to enhance the protection of the human rights of migrants.

Socioeconomic integration refers to those state processes and programs, based on equity, that promote and guarantee economic, social, and cultural rights (ESCR), in order to improve the living conditions and dignity of people, particularly the most vulnerable, such as migrants and refugees.¹ Likewise, integration processes benefit the communities in which this population lives, as they strengthen economic development, public health, social equity, and reinforce social cohesion.²

Regularization plays a fundamental role in socioeconomic integration because, in most countries, access to fundamental rights such as health, education and work, among others, depends on one having a regular migratory status. In particular, the lack of a regularized migratory status is the main legal barrier to their inclusion in the labor market and, consequently, to integration. The lack of a regularized migratory status makes it very difficult for migrants and refugees to find a job or develop a formal business, so many of them are pushed into informality to generate their income. This exposes them to precarious conditions and even situations of exploitation.

The State of Colombia has launched one of the most ambitious and recognized regularization processes in the world during the past few years. This document presents a brief description of this process, as well as an analysis of the challenges and barriers faced by the migrant population in accessing regularization, in order to identify lessons learned from these experiences.

¹ Sierra, R. (2001). Integración social y equidad en la perspectiva del desarrollo humano sostenible. Colección de Cuadernos de Desarrollo Humano sostenible 1–Programa de las Naciones Unidas para el Desarrollo (PNUD). <https://catedraunescodh.unam.mx/catedra/BibliotecaV2/Documentos/Globalizacion/Articulos/IntegracionSocialEquidad.pdf>

² Chaves-González, D., Amaral, J. y Mora, M. (2021). Integración socioeconómica de los migrantes y refugiados venezolanos: los casos de Brasil, Chile, Colombia, Ecuador y Perú. Organización Internacional para las Migraciones (OIM) y Migration Policy Institute (MPI). [https:// www.migrationpolicy.org/research/integracion-socioecono-mica-migrantes-refugiados-venezolanos](https://www.migrationpolicy.org/research/integracion-socioecono-mica-migrantes-refugiados-venezolanos)

1. THE REGULARIZATION PROCESS IN COLOMBIA

Of the countries in Latin America and the Caribbean, Colombia has received the most Venezuelan migrants since 2015. According to the Interagency Coordination Platform for Refugees and Migrants from Venezuela (R4V), more than 7 million people have left Venezuela, and about 35.3% (2,477,588) of them are in Colombia.³ Most of these people have intended to remain in the country, but have not had the resources and documentation necessary to apply for a visa.⁴ In light of these circumstances, the national government has taken measures to facilitate access to a regular migratory status for this population and, consequently, to their socioeconomic integration.

The following is a summary of the different migration regularization mechanisms that have been implemented since 2017, concluding with the current Temporary Protection Status for Venezuelan Migrants (hereinafter ETPMV) created in 2021.

1.1. *The Special Permit to Remain (2017-2021)*

The Colombian government's first effort to facilitate access to a regular migratory status for Venezuelan individuals who could not access a visa was the creation of the Special Permit to Remain (hereinafter PEP) in 2017. This permit authorized whoever carried it to remain in the national territory for a period of two years; to carry out any legal activity or have any occupation; and to access the health, education, and financial system. Due to the fact that people coming from Venezuela continued to arrive in the country permanently, and the times established to apply for the PEP were very limited, the Ministry of Foreign Affairs had to extend the deadline to apply for the permit on four occasions.

Since 2018, the benefits of the PEP were extended to Venezuelan individuals belonging to three particular groups so that they could more easily access regular immigration status: 1) individuals who had registered in the Administrative Registry of Venezuelan Migrants (RAMV)⁵ 2) members of the Venezuelan armed and police forces who temporarily and voluntarily separated from their position and 3) individuals who applied for refugee status, but whose application was rejected.⁶

³ Interagency Coordination Platform for Refugees and Migrants from Venezuela (R4V). Accessed February 14, 2023. <https://www.r4v.info/es/refugiadosymigrantes>.

⁴ The main requirement to apply for a visa in Colombia is to have a passport. However, in Venezuela, people face serious difficulties in accessing a passport due to delays in the processing, costs, and acts of corruption. The official cost of the passport is USD \$216 and the extension was readjusted to USD \$108. In addition, the process can take months due to administrative obstacles. See, Rostros Venezolanos. SAIME desmiente nuevo aumento en precio del pasaporte venezolano. Accessed February 14, 2023. <https://rostrosvenezolanos.com/saime-precio-pasaporte-venezolano-exterior-prorroga/>. In 2021, according to the National Administrative Department of Statistics of Colombia (DANE), only 28% of Venezuelans in Colombia have passports and, of these, 69% have expired. In addition to the passport, in order to apply for a visa it is required to have had a regular entry into the country, to present apostilled documents depending on the type of visa—a procedure that is almost impossible to carry out in Venezuela—and to have the resources to pay for it.

⁵ The RAMV was an effort by the national government to recognize the migrant population that had arrived in the country as of June 2018, regardless of how they had entered. This was the first time that the government allowed people who had entered Colombian territory irregularly to access a regular migratory status.

⁶ Ramírez, L., Arroyave, L., y Corredor, J (2022). Ser migrante y trabajar en Colombia: ¿Cómo va la inclusión laboral de las personas provenientes de Venezuela?. Centro de Estudios de Derecho, Justicia y Sociedad (Dejusticia). <https://www.dejusticia.org/wp-content/uploads/2022/09/Ser-migrante-y-trabajar-en-Colombia.pdf>

Subsequently, in January 2020, the Special Permit to Remain for the Promotion of Labor Formalization (hereinafter PEPFF) was created as a consequence of the difficulties that most Venezuelan people had in regularizing their situation. This permit was aimed at Venezuelans in an irregular situation who had an offer of work or services.⁷

Barriers to accessing the PEP and PEPFF

Despite having a regularization mechanism, by the end of 2020, 56% of the Venezuelan migrant population was in an irregular situation, showing the limitations of the PEP due to two main factors:

1. The difficulty of complying with the requirements, its temporary nature, and the impossibility of extending it to members of one's nuclear family.
2. In addition to the requirement of having entered the country regularly, the PEP only authorized people to remain in Colombia for two years, and although this term was extended, this temporary nature made it difficult for Colombian society as well as national and local institutions and the institutional framework to undertake structural changes for real inclusion.

The shortcomings of the regularization mechanisms implemented until 2020 made evident the necessity to create and implement a widespread regularization process to overcome the aforementioned barriers.⁸ In response to this need, in February 2021, the Colombian State announced the creation of the Temporary Protection Statute for Venezuelan Migrants and officially recognized the permanence of the Venezuelan migrant population.⁹

1.2. Temporary Protection Status for Venezuelan Migrants (2021-2031)

The Decree 216 of 2021 of the Ministry of Foreign Affairs created the Temporary Protection Statute for Venezuelan Migrants (ETPMV)¹⁰, a measure that has two objectives: 1) to identify and characterize the Venezuelan migrant population in Colombia and 2) to regularize their migratory situation. The ETPMV is valid for 10 years and includes the Single Registry of Venezuelan Migrants (RUMV), which collects the personal and socioeconomic data of those who decide to register, and is administered by Migración Colombia. In addition, it created the Temporary Protection Permit (hereinafter PPT), which is an identification document that authorizes the person who carries it to remain in the country for ten years, work and access the health, pension, education, and financial systems.¹¹

⁷ *Ibidem* p. 49.

⁸ *Ibidem* p. 51.

⁹ Pelacani, G., Moreno, V., C., Dib-Ayesta, L. y Tobón Ospino, M. (2021). Estatuto temporal de protección para migrantes venezolanos: reflexiones de una política de regularización migratoria. Informes CEM, Informe 3-2021. Centro de Estudios en Migración (CEM). [Archivo PDF]. <https://migracionderecho.uniandes.edu.co/wp-content/uploads/Informe-CEM-3-Estatuto-Temporal-de-Proteccion-para-Migrantes-Venezolanos-reflexiones-de-una-politica-de-regularizacion-migratoria-2.pdf>

¹⁰ Among the justifications for creating this mechanism, the decree points out the importance of the Colombian State taking measures to facilitate the labor inclusion and economic integration of migrants and refugees, allowing them to generate "for themselves and their families decent living conditions and important contributions to the growth and economic development of the country".

¹¹ Ministerio de Relaciones Exteriores (2021). Decreto 216. Por medio del cual se adopta el Estatuto Temporal de Protección para Migrantes Venezolanos Bajo Régimen de Protección Temporal y se dictan otras disposiciones en materia migratoria. 01 de marzo de 2021. [Archivo PDF]. https://www.cancilleria.gov.co/sites/default/files/Normograma/docs/decreto_0216_2021.htm

2. GAPS AND CONCERNS REGARDING THE ETPMV

Despite the importance of the Statute, several civil society organizations have highlighted gaps and concerns regarding this regularization mechanism. Among them, a few that stand out are:

- the extensive control of the Ministry of Foreign Affairs and Migration Colombia. Both entities, and in particular Migration Colombia, have not defined their functions and competencies, which has led to rights violations against migrants and refugees.
- the difficulties of access due to technological gaps, since the process is carried out through the Internet without taking into account the barriers of connectivity and access to technology faced by the migrant and refugee population in Colombia.
- the limitations to the right to due process. Due to the lack of clear regulations regarding the functions and competencies of Migration Colombia, this institution has, on several occasions, made arbitrary decisions that violate the right to due process of migrants and refugees.
- the weakening of the refugee system. The ETPMV is a temporary measure and is therefore not complementary to guarantee international protection. It also risks undermining the status of refugee and violating the principle of non-refoulement of this population.
- the risks to the right to privacy and the protection of personal data. The requirement of biometric data for migrants to access the Single Registry of Venezuelan Migrants (RUMV) is not voluntary, meaning that refusing to provide this data is equivalent to being excluded from the ETPMV.
- the lack of access to a regular migratory status, because the fact that the ETPMV is valid for 10 years does not mean that it is possible to access it at all times

Below, we first describe the risks that Venezuelan migrants face due to the temporary and personal conditions of the ETPMV. Secondly, we explain risks of violations to the right to the protection of personal data¹² because of the collection and use of biometric data for inclusion in the Unified Registry and to complete the PPT application.¹³

2.1. *Limits on the temporary and personal scope of application of the ETPMV*

Currently, the ETPMV is valid for 10 years; however, this does not mean that Venezuelan migrants can access this mechanism to regularize their migratory situation at any time. According to Decree 216 of 2021, the ETPMV stipulates specific times for, on the one hand, registering and providing the required information in the RUMV (until November 24, 2023, art. 40.1 of Resolution 971 of 2021) and, on the other hand, for requesting and accessing the PPT (until March 1, 2025, art. 40.2 of the Resolution).¹⁴

¹² Dejusticia y Fundación Karisma (01 de marzo de 2021). Lo que no puede quedar por fuera del Estatuto Temporal de Protección para personas migrantes venezolanas. https://www.dejusticia.org/wp-content/uploads/2021/03/Comentarios-Dejusticia_Borrador-decreto-EPTMV.pdf

¹³ Pelacani, G., Moreno, V., C., Dib-Ayesta, L. y Tobón Ospino, M. (2021). Estatuto temporal de protección para migrantes venezolanos: reflexiones de una política de regularización migratoria. Informes CEM, Informe 3-2021. Centro de Estudios en Migración (CEM). [Archivo PDF]. <https://migracionderecho.uniandes.edu.co/wp-content/uploads/Informe-CEM-3-Estatuto-Temporal-de-Proteccion-para-Migrantes-Venezolanos-reflexiones-de-una-politica-de-regularizacion-migratoria-2.pdf>

¹⁴ Ibidem pg. 18.

Regarding the scope of personal application, there is also a limitation because the Statute is not open to all persons of Venezuelan nationality who are in Colombia, but only to those who meet the requirements established in Article 4 of Decree 216 of 2021.¹⁵ This type of conditioning implies that persons who do not comply with these terms are excluded from the ETPMV, as is currently happening with persons who have entered the country irregularly since February 1, 2021. This will soon also happen to those who enter regularly after the first two years of validity of the ETPMV (May 2023), since after this period they will no longer be able to regularize their status by this means but by ordinary means such as visas.

Human rights organizations are extremely concerned about the application of these conditions in the personal sphere, for at least two reasons. First, those people being excluded from the application of the Statute are usually in a situation of greater vulnerability. Excluding this portion of the population from the Statute entails making the person responsible for a situation that, in many cases, may not depend on them or their willingness to comply with the established requirements. Finally, it is worrisome that once again it is assumed that irregular entry is a voluntary decision by individuals, which ignores the reasons that led this population to enter Colombia¹⁶ or other countries of the Americas irregularly in the first place.

2.2. *Biometrics and data protection*

Another concerning element of Colombia's migration regularization scheme is its problematic collection and use of biometric data. The Temporary Protection Statute in Articles 5-8 requires Venezuelan migrants to submit biographical, demographic, and biometric data in order to be registered. In this context, biometric data includes facial and iris recognition data. We find that this requirement could lead to violations of the Venezuelan migrant population's fundamental rights to habeas data, privacy, equality, and non-discrimination.

As in many other countries, in Colombia biometric data is regarded as sensitive information, garnering special constitutional and legal protection. In general, use of biometric data is prohibited. We are unconvinced that registering and identifying Venezuelan migrants requires the collection and analysis of biometric data. The demographic and biographic information included on their identification documents is enough to identify an individual. The regularization statute gives no justification for the use of biometric data other than to identify individuals and "to formulate public policy". In our view, this justification and the end use of this data is not specific enough to avoid potential violations of privacy and data protection.

¹⁵ Decree 216 of 2021, Article 4, "The Temporary Statute of Protection for Venezuelan Migrants under Temporary Protection Regime applies to Venezuelan migrants who wish to stay temporarily in the national territory, and who meet any of the following conditions: 1. Be in Colombian territory on a regular basis as holders of an Entry and Stay Permit (PIP), Temporary Stay Permit (PTP) or a Special Stay Permit (PEP) in force, regardless of its stage of issuance, including the PEPFF. 2. Be in Colombian territory in a regular manner as holders of an SC-2 laissez-passer in the framework of the processing of a request for recognition of refugee status. 3. To be in Colombian territory in an irregular manner as of January 31, 2021. 4. To enter Colombian territory in a regular manner through the respective Migratory Control Post legally authorized, complying with the requirements established in the immigration regulations, —during the first two (2) years of validity of this Statute.

¹⁶ Pelacani, G., Moreno, V., C., Dib-Ayesta, L. y Tobón Ospino, M. (2021). Estatuto temporal de protección para migrantes venezolanos: reflexiones de una política de regularización migratoria. Informes CEM, Informe 3-2021. Centro de Estudios en Migración (CEM). [Archivo PDF]. <https://migracionderecho.uniandes.edu.co/wp-content/uploads/Informe-CEM-3-Estatuto-Temporal-de-Proteccion-para-Migrantes-Venezolanos-reflexiones-de-una-politica-de-regularizacion-migratoria-2.pdf>

Migrants do not have freedom to choose whether they want to submit their biometric data to the State, since the regularization scheme conditions access to basic services and protection on them handing over sensitive biometric data. This condition hinders migrants' ability to consent and establishes an obligation that contravenes the principle of freedom, with no legal or constitutional basis. This provision lacks proportionality and necessity.

The requirement of biometric data of Venezuelan migrants in particular demonstrates unjustified—thus, unconstitutional—differential treatment because other migrants and Colombian nationals are not required to submit biometric data for migration registration or for access to basic services. These other populations are only required to submit biographic and demographic information, a photo (not valid for facial recognition), and fingerprints. Without a clear justification for this differential treatment, this regulation violates the rights to equality and non-discrimination on grounds of national origin. This data could potentially be used by the State to discriminate as part of official policies, by State agents acting with discretion, or by private individuals acting with the State's acquiescence.

Harvesting biometric data from Venezuelan migrants also exposes them to unnecessary risks and potential irreparable harm to their security and privacy that neither nationals or other migrants have to face. The use of technology for the processing of biometric data is not effective, efficient or secure.

This type of biometric data can be used to track and trace people in both legitimate and illegitimate ways. Biometric systems also may fail and are susceptible to false positives and negatives like other identification technologies. Further, any security breach or leak has serious impacts and is more severe than security breaches related to other types of personal data. We are not convinced that the Colombia Migration Department nor the Social Security system have the capacity to work with and protect biometric data. On the contrary, in 2021, Colombian immigration authorities revealed a security error in its information system that resulted in the exposure of the personal information of more than half a million foreigners.

3. RECOMMENDATIONS

Considering Colombia's experience in the regularization process of Venezuelan migrants, we respectfully recommend that the United Nations Special Rapporteur take the following recommendations into account for his next report:

- a. Review the limitations presented by the regularization mechanisms in the region, and in particular in Colombia, the personal and temporary conditions, which impose additional barriers on Venezuelan migrants to regularize their migratory situation.
- b. Call on States to create permanent regularization processes for undocumented and vulnerable migrant populations, regardless of their nationality, in addition to existing visas. These should be accessible in the long term and allow for the future stability of migrants. These measures should not replace the responsibility of States to guarantee international protection and recognize refugee or stateless status to those who require it.
- c. Urge States in the region to ensure that regularization processes guarantee family unity and due process, for the reasons explained above.

- d. Insist for States not to condition access to regularization processes on the delivery of biometric data, which can expose migrants to human rights violations, discrimination, and arbitrary decisions.

Kind regards,

**Center for the Study of Law, Justice, and
Society (Dejusticia)**

Email: larroyave@dejusticia.org