

**Temporary Protected Status as a Path Forward for Migration
Policy: a study of Venezuelan migration in Colombia**

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Abstract

For the greater part of the last century, the United Nations has utilized the designation of ‘refugee’ and international refugee law to protect the most vulnerable migrating populations in the world. Yet, as the international community growingly recognizes the nuance of migration push factors resulting in ‘mixed migration’ flows, complementary migration policy such as Temporary Protected Status (TPS) can provide an inclusive addition of coverage to those outside of the scope of current international protection.

More than 6 million Venezuelans have already fled their home country, and the exodus of Venezuelan migrants into neighboring Latin American countries is set to become the largest migration flow in the world. Colombia has received well over 2 million Venezuelans since 2015, and the Colombian government has reacted by enacting several ad hoc TPS programs designed to provide legal status to the incoming population, including the right to work, access the public healthcare system and enroll in public education for up to 10 years.

In this paper, I will utilize policy documents, academic critiques and in-person interviews with Venezuelan migrants in Colombia to analyze the strengths and weaknesses of the Colombian TPS program, then use this informational base to conceptualize the role of Temporary Protected Status in international migration policy. Ultimately, I find that the Colombian initiative greatly expanded the protections and utility of TPS programs, and suggest a larger role for TPS programs to react to future international migration flows.

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Abbreviations Guide

(TPS) Temporary Protected Status

(IOM) International Organization for Migration

(UNHCR) United Nations High Commission for Refugees

(NRC) Norwegian Refugee Council

(IRC) International Rescue Committee

(MPI) Migration Policy Institute

(CEM) Centro de Estudios en Migración / Center for Migration Studies

(PEP) Permiso Especial de Permanecía / Special Stay Permit

(ETPV) Estatuto Temporal de Protección para los Venezolanos / Temporary Statute for the Protection of Venezuelans

(CONARE) Comisión Asesora para la Determinación de la Condición de Refugiado / Advisory Commission for the Determination of Refugee Status

(RUMV) Registro Único de Migrantes Venezolanos / Unique Registry of Venezuelan Migrants

(PPT) Permiso de Protección Temporal / Temporary Protection Permit

(EPS) Empresa Promotora de Salud / Health Promotion Company

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CHAPTER 1 – THE MIGRATION CONTEXT

1.1 Introduction

The modern era of economic globalization has brought human civilization together through technological innovations that allow strangers to communicate across continents, it has separated our society by allowing individuals to observe the trends of rising global inequalities, and to a lesser extent, allowed us to travel between these two worlds. Migration is on the rise, as the International Organization for Migration (IOM) estimated 281 million migrants living in a country other than their own in 2020,¹ and the United Nations High Commissioner for Refugees (UNHCR) designated around 84 million forcibly displaced people worldwide in 2021.² The notable divide of nearly 200 million people is significant, as a large body of academic literature is devoted to the international protection of refugees, but much is left unstudied about other forms of migration policy, including the focus of this paper, the use of Temporary Protected Status (TPS).

Following the vast displacement of Europeans during the Second World War, the 1951 UN Refugee Convention and its 1967 Protocol first defined the term ‘refugee’ and guaranteed international protections to those within this categorization.³ Today, it is not only great wars that cause people to migrate, but increasingly it is the global inequalities of economic hardship, climate change and oppressive governance that push vulnerable populations to cross borders; a phenomena often referred to as ‘mixed migration’. Rather than rely solely on traditional asylum structures, domestic policies of TPS provide an alternative tool for governments to react in a humanitarian nature to large flows of modern migration. This investigation analyzes the

¹ IOM, “World Migration Report 2022”

² UNHCR, “Forced Displacement in 2020”

³ UNHCR “The 1951 Convention and Its 1967 Protocol”

strengths and weaknesses of the Colombian TPS program in reaction to Venezuelan migration, and accordingly places the innovation of this policy into the international context.

Migration is itself a natural occurrence, characterized typically by birds migrating seasonally for more abundant lands and more agreeable climates. Human migration is caused by a large number of variables. In 1966, Everett S. Lee originally developed the schema of push-pull migration factors,⁴ understood as the ingredients of a situation that motivate individuals to leave their country, as well as what type of state policy can attract foreign nationals to immigrate. This theoretical framework was later expanded upon by additional scholarship to include a more nuanced “push-pull plus” structure,⁵ and finally grew to associate macro, meso, and micro factors such as economic development, urbanization, climate change, sexual identity, political oppression and war.⁶ While explicit difficulties such as war continue to pressure millions to flee their homes each year, increased cultural, economic, and technological overlap are driving more subtle migration factors, resulting in increased flows of mixed migration.

In its simplest form, mixed migration refers to a ‘nexus’, or mixture, of migrants and refugees within a population in movement.⁷ For over a decade, the “balancing act” of mixed migration policy has been a priority for the two largest migration-centered organizations, the IOM and the UNHCR. Scholar Nicholas Van Hear elaborated on the challenge by stating that “People may move to escape life or death circumstances; they may move to escape intolerable living conditions; they may move to better themselves; or they may move for a combination of these and other reasons.” He alternatively discusses the terms “voluntary” and “forced” migrant,

⁴ Lee, “A Theory of Migration” p 50

⁵ Van Hear et al. “Push-Pull Plus: Reconsidering the Drivers of Migration” p 927

⁶ Castelli, “Drivers of migration: why do people move?” p 3

⁷ Linde, “Mixed Migration” p 92

but finds similar complications, especially for those from lower levels of socio-economic status who habitually face social and economic hardship.⁸

In addition to understanding the nuanced motivations for migrating, the impact of incoming migration on the recipient country, and that country's economy, play a crucial role in developing an adequate migration policy. At the intersection of political science and economics, Gary P. Freeman and Alan E Kessler demonstrate the varying impact of migration on select interest groups within a society, and highlight the contrasting motivations for supporting or opposing liberal migration policy. While evidence exists to support the positive impacts of migration and civic diversity on numerous aspects of economic growth,⁹ these results vary across country and societal group. Often, employers and shareholders drive liberal migration policy support to benefit from a competitive labor force, while the impact on wages and the strain on welfare structures can incite resistance to open policies, thus creating a cumulative cost-benefit analysis of societal advantage.¹⁰ In the case of Colombia, a study analyzing the Venezuelan migrant impact on public finances found that "foreign-born immigrants provided an overall net fiscal benefit during the period 2013-2018 and do not impose a higher burden to public finances relative to natives."¹¹ Finally, during his analysis of the local organizational response to Venezuelan migration in Colombia, Benjamin J Roth cites an elusive notion in migration policy, that of the "humanitarian-development nexus", understood as "the intersection of humanitarian assistance and development."¹²

⁸ Van Hear, "Mixed Migration: Policy Challenges" p 2

⁹ Bove and Elia, "Migration, Diversity and Economic Growth" p 236

¹⁰ Freeman and Kessler, "Political Economy and Migration Policy" p 667

¹¹ Mesa-Guerra and Ramirez-Tobon, "Estimating the Effect of Immigration on Public Finances" p 46

¹² Roth, "Exploring the Local Organization Response" p 6

As this paper strives to determine the strengths and weaknesses of current migration policy, and ultimately put forward an alternative structure for a practical and efficient response to extreme migration flows, it is important to clarify the factors that impact such policies and define what constitutes a ‘successful’ migration policy. A domestic government must consider the economic opportunity that migration presents in the mid to long term, especially with a legally regularized migrant population, while also enacting measures to mitigate the short term stress on state institutions caused by a significant population increase. Moreover, liberal states would do well to redistribute the benefits of migration to those segments of society that receive less, or adverse returns.¹³ Parallel to economic outcomes, state capacity is limited, and each case of migration must be studied independently in order to best systematize state infrastructure to react appropriately to the needs of the incoming population. As previously voiced, a state must also base its response on an understanding of who is migrating, and why the migration is occurring. This will ensure not only a patchwork of temporary solutions, but also progress on addressing the root causes of each migration phenomena and the best suited policy prescriptions for each situation. In addition to the economic and institutional outlook of migration, the human factor is even more important. By guaranteeing the humanitarian treatment of both migrants and refugees, and protecting universal human rights, a state can not only lessen human suffering, but also gain institutional legitimacy and international reputation.¹⁴ Finally, a comprehensive view of migration policy must consider the underlying political environment; a government should act on what is politically possible while simultaneously fostering trust and integration within a country. Scholarship has shown that an effective state response and integration between immigrant and

¹³ Freeman and Kessler, “Political Economy and Migration Policy” p 666

¹⁴ Boswell, “Theorizing Migration Policy: Is There a Third Way?” p 80

native communities can actually create more cooperative attitudes within a society, not less.¹⁵

Practically, such a policy would include international protections and humanitarian assistance for the most vulnerable, legal pathways to work, study and access healthcare for those establishing themselves, and long-term integration and citizenship programs designed to unite and foster a productive society.

Based within this interdisciplinary framework of modern migration policy, this paper will proceed as follows: first, Chapter 1 has begun by retracing the prominent literature guiding migration policy and set forth an understanding of “successful” policy goals. It will proceed to contrast the legal definitions of ‘refugee’ and ‘migrant’ while comparing the respective systems of asylum and TPS, and conclude by summarizing the deep historical context of the case study; that of ongoing Venezuelan migration in Colombia. Chapter 2 temporally examines the Colombian state’s response to an influx of Venezuelan migrants in three parts, starting with the first temporary status initiative, followed by an analysis of the strengths and weaknesses of the current program, and finally by incorporating reflection on the current policy. Chapter 3 considers the political and social motivations for the Colombian TPS response, and places the aforementioned factors into an international analysis. In conclusion, this work theorizes about the potential of future TPS implementation within an international structure, while also observing the political and social influence that could hold back such policy adoption globally.

This paper draws from multiple sources of information. First, a review of the existing academic literature provides content to serve as the interdisciplinary base of migration policy and its pivotal and expanding role in IR. Next, the CEM (Centro de Estudios de Migración / Center of Migration Studies) from the Universidad de Los Andes Legal Department in Bogotá,

¹⁵ Lebow et al. “Immigration and Trust” p 1

Colombia has produced impressive domestic critiques of the ongoing TPS programs implemented by the Colombian government, which feature heavily in Chapter 2. By examining the original policy documents from the Colombian Foreign Ministry and the governmental migration office, Migración Colombia, and mirroring the policy documents with the academic reviews of the CEM, one can comprehensively understand the ongoing dynamics of the Colombian government's response to Venezuelan migration since 2015.

Nevertheless, too often migration policy is discussed in academic or political circles without incorporating the voices of those impacted. A policy should not only be judged by how it looks from governmental offices, but also by how it is felt from city neighborhoods and country streets. As such, the official policy documents and academic reviews are supplemented by over 10 interviews with Venezuelan migrants living in Colombia, conducted in May of 2022 in the Colombian capital of Bogotá and the border city of Cúcuta. Principally, these interviews took place during two mass TPS registration events, one hosted by Migración Colombia in the Palacio de Los Deportes in Bogotá on May 3, and the other hosted by municipal authorities and the Defensoría del Pueblo in the neighborhood of El Salado in Cúcuta on May 5. Both events were designed to disseminate information and facilitate the registration of Venezuelan migrants in Colombia into the ongoing TPS program. At each, infrastructure and assistance from international organizations such as the UNHCR, the Norwegian Refugee Council (NRC), and the International Rescue Committee (IRC) were pivotal in their support. In Cúcuta, the Fundación Nueva Ilusión is a Colombian-returnee and Venezuelan migrant led, community organization that is filling in the humanitarian gaps left by larger organizations, and they provided me with access to their important and underappreciated work. Alongside of migrants engaging with the domestic TPS program, leader of the NRC Legal Assistance team in Colombia and human rights

lawyer Daniel Franco spoke to me with insight into the role of international organizations as part of the humanitarian response to the crisis, and highlighted the practical strengths and weaknesses of the Colombian TPS program. All interviews were conducted in Spanish and translated by the author, each considering the safety and privacy of the individuals, and each with the possibility of anonymity and proper data protection assurances. These personal accounts from Venezuelan migrants in varying stages of legal status regularization offer a glimpse into the practical reality behind policy intentions.

The research question of this thesis is formed in two parts, with one focused more on domestic policy, and the other placing those policy innovations into an international context. As such, the principal points of investigation are as follows; what are the strengths and weaknesses of the Colombian Temporary Protected Status program, and how can the current Colombian response to Venezuelan migration advance the role of TPS in modern migration policy internationally?

1.2 Asylum and Temporary Protected Status

There is an emerging need for united, effective and practical policy solutions to the complexity of mixed migration flows. The UNHCR has stated that “Although different in scope and nature, efforts to develop better systems for migration and for asylum go hand in hand.”¹⁶ The transition from traditional asylum systems to more nuanced structures designed to address mixed migration is a primary challenge for both domestic governments and international organizations. According to Van Hear, the UNHCR has been particularly troubled by the changing “migration-asylum nexus” due to their explicit mission statement focusing on the protection of ‘refugees’. Moreover, from the year 2000 onward, notable western countries

¹⁶ UNGA 2003:11, “Strengthening the Capacity”

became increasingly concerned “that large scale abuses of the asylum system were taking place: the view that asylum seekers were really economic migrants in disguise.”¹⁷ Due to such pressures, the UN originally shifted to a strategy of “protecting refugees within broader migration movements,”¹⁸ a precarious policy stance that leaves the majority of those migrating worldwide outside of the purview of one of the largest migration-based international organizations.

Over time, the UNHCR has steadily progressed toward a two-pronged approach, “It is important to maintain the credibility of asylum systems and regular migration channels.”¹⁹

On one hand, the organization recognizes the need to underline the distinctive status, rights, and obligation of refugees, and is sensitive to charges that it wishes to expand its mandate to broader migration issues that lie beyond its legitimate concern. At the same time, UNHCR was aware that human mobility is growing in scope, scale, and complexity, and acknowledged that other stakeholders, especially states, increasingly regarded the movement of refugees, asylum seekers and irregular migrants as part of a single (and often unwanted) phenomenon. (Crisp, 2008)²⁰

While Van Hear concludes that “This ‘balancing act’ remains a challenge in the wider policy debate on mixed migration,”²¹ IOM Director General Antonio Vitorino sought innovation in a 2019 statement, “there is a need to find alternative, less traditional mechanisms to offer solutions to refugees and migrants such as humanitarian visa issuance, family reunification, and labour mobility programming.”²² Can TPS policies offer such an alternative? First, we will examine the existing structures designed to guarantee international protection to refugees and asylum seekers.

¹⁷ Van Hear, “Mixed Migration: Policy Challenges” p 3

¹⁸ Ibid

¹⁹ UNGA 2003:11, “Strengthening the Capacity”

²⁰ Crisp, “Beyond the Nexus” p 8

²¹ Van Hear, “Mixed Migration: Policy Challenges” p 5

²² IOM press release “Adapting to Modern Complexities”

The 1951 Convention protects refugees. It defines a refugee as a person who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail him- or herself of the protection of that country, or to return there, for fear of persecution. (UN, The 1951 Convention, emphasis added)²³

The five pillars of this UN definition of ‘refugee’, and its subsequent implementation by the UNHCR, provided the first framework to protect the world’s most vulnerable population. Yet, those left outside of the given boundaries of persecution, or migrants whose fear is not deemed to be “well-founded” by recipient governments, are often excluded from the most effective humanitarian structures. While writing on mixed migration trends, former Special Representative on Migration of the International Federation of the Red Cross Thomas Linde wrote, “International Refugee Law provides indispensable protection to people forced to escape from certain situations where their lives and freedom are under threat, but it is of little help in disaggregating mixed migration in a manner that would reflect the social realities on the ground.”²⁴ Thus, in addition to the legal boundaries of asylum law, the practical difficulties have led the Migration Policy Institute (MPI) scholars Selee and Bolter to theorize that some governments “have left sclerotic and slow-moving asylum systems in place because they limit access to protection through their sheer inefficiency.”²⁵

One potential solution to bolster humanitarian protections in migration policy is to expand the current understanding of ‘refugee’. As many countries in the global north are increasingly tightening their migration intake, Latin America has been a region trailblazing new

²³ UNGA 1951 “Convention on the Status of Refugees”

²⁴ Linde, “Mixed Migration” p 95

²⁵ Selee and Bolter, “Colombia’s open-door policy” p 4

paths forward, “running counter to global trends.”²⁶ The motive for recent innovations could come from the expansion of refugee qualifications in the 1984 Cartagena Declaration on Refugees, a non-binding regional summit to address issues of Latin American migration, which stated:

the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugee persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order. (CDR 1984, emphasis added)²⁷

With the shared history and turbulent past of many Latin American countries serving as a motivating factor, the broadened definition of refugee, to include “generalized violence”, a violation of basic human rights, and a qualification of climate related impacts under “other circumstances which have seriously disturbed the public order” established by the Cartagena Declaration is a positive step towards comprehensive migration policy that begins to bridge the migration-asylum nexus and address the complications of mixed migration flows.

Along with expanded asylum programs, Temporary Protected Status structures can offer a number of benefits to both the hosting country and the migrating community. Originally established by the US Congress in the Immigration Act of 1990, “TPS is a blanket form of humanitarian relief. It is the statutory embodiment of ‘safe haven’ for migrants who may not meet the legal definition of refugee or asylee but are nonetheless fleeing- or reluctant to return to- potentially dangerous situations.”²⁸ Coupled with an understanding that “US refugee law is

²⁶ Selee and Bolter, “Colombia’s open-door policy” p 4

²⁷ CDR 1984

²⁸ Wilson, “Temporary Protected Status” p 2

ill-equipped to serve as a protection mechanism for the vast majority of individuals fleeing violent or unsafe conditions at home,”²⁹ TPS in the United States currently provides protection to approximately 437,000 foreign nationals from 10 countries.³⁰ The need for effective, side-by-side asylum and TPS programs is well documented.

However, TPS has drawn ire from both sides of the political spectrum, and the shortcomings of the US program have been diagnosed by migration scholars. TPS in the United States is a highly political procedure, with specific Executive Branch country designations occurring every 6 to 18 months, which can leave migrants in a state of “legal limbo”.³¹ The uncertainty was recently exemplified by a Trump administration decision to terminate TPS for thousands of people from Nicaragua, Haiti, El Salvador, Sudan and Honduras, some of whom have resided in the United States for over a decade.³² The current program also does not provide a legal pathway to citizenship, although patchwork legislation has addressed this issue on multiple occasions.³³ Several of the proposed solutions to strengthen the United States TPS program, such as expanding asylum protections and providing a legal pathway to citizenship for TPS migrants, have been enacted by the Colombian government, making the Colombian response to Venezuelan migration an important case to study.

²⁹ Bergeron, “Temporary Protected Status after 25 years” p 23

³⁰ Wilson, “Temporary Protected Status” p 4

³¹ Bergeron, “Temporary Protected Status after 25 years” p 22

³² Frelick, “What’s Wrong with Temporary Protected Status” p 43

³³ Wilson, “Temporary Protected Status” p 11

1.3 Venezuela and Colombia

“Venezuela’s fall is the single largest economic collapse outside of war in at least 45 years.”³⁴ In 2014, the rate of extreme poverty in Venezuela (less than \$1.90 per day) was 13.1%, but by 2021, that indicator had reached 76.6%, with overall poverty rates by income levels at 94.5% of the population.³⁵ Harvard University economics professor Kenneth Rogoff stated that “It’s really hard to think of a human tragedy of this scale outside of civil war.”³⁶ Venezuela was once the wealthiest country in Latin America, and still today has the world’s largest proven oil reserves, but years of hyperinflation in the millions of percent and overdependence on the state-run oil industry have crippled the country.³⁷

In human terms, runaway levels of inflation have caused the price of basic goods, such as a cup of coffee, to double every week for months consecutively,³⁸ leaving many products out of reach for a majority of households. The electricity for entire city blocs has gone out for days at a time, and butcher shops have replaced meat cuts with lard and cow hooves. A duffle bag filled with Venezuelan Bolivars that represent the life savings of middle and upper class families has lost nearly all of its value, not worth the paper that it is printed on, which drove increased use of the US dollar as a transactional currency. The Venezuelan state has abandoned many areas outside of the capital city of Caracas, leaving criminal gangs to use exploitation and violence on already vulnerable populations.³⁹

The current market implosion in Venezuela has its roots in the economic restructuring of controversial leftist former president Hugo Chavez. From first taking office in 1998 until his

³⁴ NYT Anatoly Kurmanaev, “Venezuela’s Collapse is the Worst”

³⁵ Reuters, “Extreme Poverty in Venezuela”

³⁶ NYT Anatoly Kurmanaev, “Venezuela’s Collapse is the Worst”

³⁷ Ibid

³⁸ Bloomberg, Café con Leche Inflation Index

³⁹ NYT Anatoly Kurmanaev, “Venezuela’s Collapse is the Worst”

death in 2013, Chavez oversaw an expansion of social services and redistribution of wealth that cut unemployment in half and resulted in a drop of extreme poverty from 23.4% in 1999 to 8.5% in 2011.⁴⁰ However, he also transformed Venezuela into a highly corrupt and authoritarian “petrostate”, one which jailed opposition figures and concentrated political power into the hands of loyalists. Chavez was boosted by a cult of personality and boom in oil prices during the 2000s, but just after his death in 2013, the economy began to seriously suffer from “Dutch disease”, an economic diagnosis characterized by a resource boom and economic wealth concentration, followed by a crash of soaring debt, hyperinflation and institutional corruption.⁴¹ The handpicked successor of the Bolivarian Republic of Venezuela, Nicolás Maduro, has reacted with more authoritarian measures to quell dissent and mismanaged the economic crisis. Misguided sanctions and an oil-embargo led by United States National Security Advisor John Bolton in 2019 have only exacerbated the suffering.⁴² Currently, an estimated 20% of Venezuelans (~6 million in a country of 30 million) have fled their country since 2013, with official estimates placing the largest sum of 2.5 million Venezuelans in neighboring Colombia.⁴³

Colombia is an optimistic South American country that is eclipsing six decades of violent, armed civil conflict between warring guerilla groups, paramilitary units, criminal drug organizations and state authorities with a historic 2016 peace deal to disarm and reintegrate the largest armed group, the Fuerzas Armadas Revolucionarias de Colombia, or las FARC. The violence left 260,000 dead and 80,000 more missing,⁴⁴ and Colombia has the largest population

⁴⁰ The Guardian, “How did Venezuela change under Hugo Chavez”

⁴¹ Council of Foreign Relations, “Venezuela: the rise and fall of a Petrostate”

⁴² Neuman, “Venezuela sanctions aren’t working”

⁴³ R4V, RMRP 2022, p 104

⁴⁴ WOLA, “A Long Way to Go”

of Internally Displaced People (IDPs) in the world, at roughly 8.3 million IDPs as of 2020.⁴⁵ In fact, the violence of the early 2000s drove many Colombians to migrate to oil-rich Venezuela, and now as many as 500,000 Colombians are returning home.⁴⁶ The omnipresent impact of the conflict, particularly in the hills, valleys, jungles and coasts of the Colombian countryside, where state presence is often unwelcome or nonexistent, has impacted the growth of extractive or illegal economic structures and ultimately resulted in Colombia being one of the most unequal countries in Latin America.^{47 48}

The agonistic 2016 peace process⁴⁹ is an example of the innovative policy solutions that Colombia is capable of, and a Notre Dame Institute stated that it is “the most varied and complex implementation agenda of all the peace agreements signed since 1989”. But a lack of political will from the current administration of Ivan Duque, as well as a polarized public and limited resources, have caused the progress to stall.⁵⁰ In many of the most exploited and disadvantaged regions in Colombia, community leaders and human rights defenders continue to be killed.⁵¹ The covid-19 pandemic exacerbated existing economic inequalities and added to public frustration with the Duque administration.⁵² In 2019 and 2020, Colombian cities witnessed some of the largest protests in the country’s history, as the student, labor union and indigenous led “paro nacional” expressed clear dissatisfaction with the neoliberal economic structures and lack of progress of the peace deal. In the city of Cali, there were accusations of state-sponsored violence

⁴⁵ Moreno, “Asylum and Internal Displacement”, p 11

⁴⁶ Selee and Bolter, “Colombia’s open-door policy” p 1

⁴⁷ Bircan, Bruck, Vothknecht, “Violent conflict and inequality”

⁴⁸ OECD, “Reforming the pension system to increase coverage and equity in Colombia”

⁴⁹ Martin, Hansen, Grondona, “A case for agonistic peacebuilding in Colombia”

⁵⁰ WOLA, “A Long Way to Go”

⁵¹ Reuters, “At least 78 rights defenders killed in Colombia in 2021”

⁵² Al Jazeera, “An SOS”

against young protesters and month long blockages.⁵³ In the environment of ongoing social unrest, a struggling peace agreement and a global pandemic, Colombia is also being confronted with the largest migrant flow in the history of Latin America.

⁵³ El Espectador, “Paro nacional de 2021”

CHAPTER 2 – TPS IN COLOMBIA

2.1 Venezuelan Migration and the Latin American Response

*“Three years ago in Venezuela, the lights went out in our house, and they didn’t turn back on for five days. That’s why I left.”*⁵⁴

The ongoing economic collapse and subsequent migration of millions of people from Venezuela has influenced every country in Latin America. Countries with a closer proximity, such as Colombia, Brazil and Peru, have received larger numbers of Venezuelan migrants, though thousands of Venezuelans have also traveled as far as Argentina, Chile, and Mexico. Officially, it is the second largest migration flow in the world, behind Syrians fleeing war, but unofficial estimates and projections suggest that it will soon be the largest, placing around 8 to 9 million Venezuelan migrants in Latin America by the end of 2022.⁵⁵ Moreover, the crisis is vastly underfunded; by the end of 2020, total international funding for the Syrian exodus was \$20.8 billion, compared to only \$1.4 billion designated for Venezuelans. Per person, those totals equate to \$3,150 per Syrian refugee and just \$265 per Venezuelan migrant.⁵⁶ UNHCR’s Filippo Grandi called it “one of the most underfunded humanitarian appeals in the world for one of the biggest crisis.”⁵⁷

The challenge of this specific migration flow is not only the large and sudden exodus from Venezuela, but the mixed levels of vulnerability and affiliated need of those on the move. Though greatly underfunded, local and international organizations have been the principal forces on the ground to react to the emergency needs of migrants and hold back greater humanitarian

⁵⁴ Lori Cardoso, interview and translation by author, Bogota, May 3 2022

⁵⁵ R4V, RMRP 2022

⁵⁶ Brookings, “Venezuelan refugees and their receiving communities”

⁵⁷ Al Jazeera, “UN appeals for more aid for Venezuela refugees”

tragedy.⁵⁸ In particular, the presence of armed groups and exploitation on the border of Venezuela and Colombia has been identified as a major point of vulnerability for those who pass through *trochas*, or unofficial paths, to cross the border. Once inside of Colombia, *caminantes* are those making the journey on foot, where entire family groups can be seen walking through the cold mountains and scorching valleys of the Colombian countryside for the 550 kilometer journey to Bogota, which is only a stop for those who continue on toward Ecuador and Peru.

Most countries in the region reacted to the initial migration by opening their borders to arriving Venezuelans, with 10 of 11 countries allowing visa-free entry. Brazil and Mexico have relied primarily on their existing asylum structures, while many other countries have opted for various forms of TPS, which ultimately granted some form of legal status to nearly half of the migrant community.⁵⁹ However, despite pledges at a regional summit, the Quito Process, in 2018 to continue the open and united policies, several countries have begun to tighten their border controls. The shift in policy is exemplified by Peru, the second largest host country to Venezuelan migrants. In 2017, Peru granted thousand of TPS permits to arriving Venezuelans, effectively granting a temporary residence to live and work in the country. By 2019, facing increased domestic political pressure to limit migration, Peru transitioned to granting humanitarian visas to arriving migrants, but the requirement of physical documents such as valid passports for registration has excluded many and decreased the available paths for legal entry. Since the policy change, asylum applications have shot up and illegal migration has increased in Peru, highlighting the effectiveness of the prior TPS program.⁶⁰

⁵⁸ Benjamin J Roth, "Exploring the Local Organizational Response" p 3

⁵⁹ Selee and Bolter, "An Uneven Welcome" p 7

⁶⁰ Ble et al. "From Displacement to Development" p 7

The Colombian response is important to analyze because it is the country receiving the largest influx of migrants, and because it has remained committed to maintaining, and even expanding, its open migration policies. The Brookings Institution declared that, “This is perhaps the most generous amnesty program to undocumented immigrants in modern history” in reference to the Colombian TPS program.⁶¹ By writing on the topic, I hope to highlight the severity of the crisis and the ingenuity of the policy innovations originating from Latin America, as well as expand the English language coverage of the case through an academic review and translated interviews with migrants in Colombia. So what is the Colombian TPS program, what are its strengths and weaknesses in responding to Venezuelan migration, and how is this policy reflected by the experiences of the migrants themselves?

2.2 The PEP and ETPV Programs

“Colombia has historically been a country that emits people, that is to say, we emigrate. This is the first time that we are confronting the reception of migrants. Because of this, the state was not prepared for this type of migration dynamic...we didn’t know what to do... At one point, there were many people arriving to seek medical services, because many Venezuelan medical professionals themselves began to migrate, so the medical system in Venezuela collapsed. That’s when asylum applications initially shot up here in Colombia. The CONARE, the Colombian authority for processing the asylum applications, had never confronted such a high volume of cases, and it was taking around 3 years to determine a case. That’s 3 years that a person can’t work or leave the country.

Given all this, they searched for another, faster option, which became the ETPV, or the temporary status. They said, as we know where the population is coming from, we know what

⁶¹ Brookings, “Venezuelan refugees and their receiving communities”

they need and that those needs fit the profile for international protection, we are going to try to speed up this process. That is to say, for all the Venezuelan population in Colombia that fits certain requirements, we are going to recognize their temporary protection.”⁶²

The Colombian authorities created various policies ‘ad hoc’ in reaction to the development of the crisis, from early measures of emergency migration to the expansion of long-term planning. By avoiding the legal distinctions between refugee and migrant in favor of temporary status programs, Colombia created a policy that is less institutionally arduous and more apt for large scale migration.⁶³ The transition from immediate to lasting policy is particularly demonstrated by the two principal TPS measures, the **PEP** (Permiso Especial de Permanencia / Special Stay Permit) and the **ETPV** (Estatuto Temporal de Protección para los Venezolanos / Temporary Statute for the Protection of Venezuelans).⁶⁴ The progression of TPS programs stands in contrast to the asylum structure in Colombia, which has faced the ongoing migration phenomena by relying on its bureaucratic structure, that is, meticulous individual case determinations, rather than adapt to the dynamics of extreme migration. This has caused practical limitations by creating a bottleneck of state capacity, as described above by Colombian lawyer Daniel Franco.

However, it should be noted that the existing asylum structure in Colombia, working through both Migración Colombia and the Colombian foreign ministry’s CONARE (Comisión Asesora para la Determinación de la Condición de Refugiado / Advisory Commission for the Determination of Refugee Status) has an important, albeit limited, role in responding to the needs of the Venezuelan mixed migrant population. In specific circumstances, such as a case of severe

⁶² Daniel Franco, NRC, , interview and translation by author, Bogota, May 3 2022

⁶³ Selee and Bolter, “Colombia’s open-door policy” p 4

⁶⁴ CEM 1, “La Gestión de La Migración en Colombia Hoy” p 15

political persecution, the international guarantee of “non-refoulment” (protection from return to country of origin) that an ongoing asylum application permits can be prioritized over the ease and benefits of TPS.⁶⁵ Moreover, at the moment an asylum-seeker submits an application for refugee status, they receive a “salvoconducto” (safeguard) for six months in Colombia that allows them to access healthcare immediately. In cases of immediate health concerns or life-threatening political persecution, the international protection of refugee status is a useful tool. Moreover, current policy allows for simultaneous application to asylum and TPS programs, of which the “salvoconducto” can provide limited protection and medical access while going through the 3 month TPS application process, up until the confirmation of a TPS or asylum case, requires the migrant to choose between the two.⁶⁶

Yet, for the majority of the migrating population, the TPS structures in Colombia are being prioritized by both the government and international organizations due to their relative ease and practical design that can quickly permit access to healthcare, education, the official workforce and a pathway to future citizenship for millions of migrants. Implementation of the PEP began in 2017 and granted two years of renewable legal status to those who registered. Initially, the PEP required legal entry and valid documentation, which proved to be a major barrier to widespread registration, and thus was modified to allow greater access. Additionally, the PEP did not enable a path to further citizenship, nor did the years residing in Colombia with the PEP count towards the five years necessary to apply for permanent residency.⁶⁷ In 2019, the Duque administration passed an executive order allowing children born in Colombia to Venezuelan parents to access Colombian citizenship, regardless of the legal status of the parents.

⁶⁵ Selee and Bolter, “Colombia’s open-door policy” p 14

⁶⁶ CEM 3, “Estatuto Temporal de Proteccion” p 33

⁶⁷ Ibid, p 10

Colombia does not grant birthright citizenship, and the protection that stems from proper documentation and nationality of children born to Venezuelan parents in Colombia is a complex and ongoing concern, as argued by a report by the CEM.⁶⁸ These posterior solutions reflect the ad hoc nature of the early Colombian response in filling the gaps left by policy deficiencies of the PEP. Yet, through nine phases of the PEP from 2017 to 2021, the Colombian government was able to grant legal TPS status to an estimated 707,000 Venezuelans. It was also able to gather information on those not yet enrolled. While the PEP managed to register and improve the security and opportunity of hundreds of thousands of migrants, nearly a million Venezuelans were estimated to be residing unofficially in Colombia as of 2021, marking less than half as legal residents.⁶⁹

The MPI's Andrew Selee and Jessica Bolter comprehensively reviewed the Colombian PEP policy in the larger TPS debate,⁷⁰ and suggested further study to respond to the changing dynamics of Venezuelan migration flows, which will be taken up here.

The ETPV is the latest update in Colombian TPS policy, designed to improve upon the limited successes of the PEP program and transition to lasting policy innovations that not only address the difficulties of emergency and mixed migration, but also look to integrate and resettle a large migrant population. In this way, the ETPV has directly addressed some of the policy shortcomings of the PEP. First and foremost, the ETPV permits 10 years of legal status from the start date of the program in 2021, compared to the renewable 2 year status of the PEP. That is to say, Venezuelans that enroll in the ETPV will be granted legal status in Colombia until 2031. Unlike the PEP and the United States TPS program, the years of stay in Colombia regularized by

⁶⁸ CEM 2, "La Apatridia en Colombia"

⁶⁹ Selee and Bolter, "Colombia's open-door policy" p 7

⁷⁰ Ibid

the ETPV also count towards the five year requirement to qualify for permanent residence, thus, in theory, allowing for a path to long-term legal status.⁷¹ Similar to the later stages of the PEP, enrollment in the ETPV requires some form of identification, but the Colombian policy expanded the existing measures to include birth certificates and expired documents.

In terms of accessibility, the ETPV is open to those who were previous PEP holders, currently have a “salvaconducto” from an ongoing asylum request, can show proof of residing in Colombia irregularly before January 31 of 2021, or have entered the country legally in 2021 or 2022. Migrants excluded from the program include those who were not on Colombian soil before January 31 of 2021, those who cannot present a document of identification and those who do not agree to the data collection of fingerprints and demographics required by the process.⁷² Moreover, those found to have a prior criminal conviction or migration violation are not eligible for inscription.⁷³

Procedurally, the ETPV program consists of three main steps. The first is an e-governance initiative called the RUMV (Registro Único de Migrantes Venezolanos / Unique Registry of Venezuelan Migrants). Designed to expand access and in consideration of the ongoing covid-19 pandemic, the RUMV is an online registration form to be completed through the Migración Colombia website. Upon completion of the RUMV, one can then schedule an in-person biometric registration of finger prints and correct demographic information at a designated registration point. Finally, after an estimated 90 day period, a confirmation phone call or email will notify the applicant, and the document pick-up can be scheduled. Possession of the approved ID card, the PPT (Permiso de Protección Temporal / Temporary Protection Permit),

⁷¹ CEM 3, “Estatuto Temporal de Protección” p 17

⁷² Ibid, p 19

⁷³ Presidencia de la Republica, 2021

grants the holder a regularized legal status in Colombia for the duration of the ETPV program, with the right to work in the official economy, open a bank account, register and access the public healthcare system, and enroll in public education.⁷⁴

At the time of writing, the ETPV program in Colombia has recorded 2,381,831 completed RUMV online forms, 1,808,127 completed biometric registrations and 1,016,559 issued PPT cards, a number which should rise as more individuals complete their registration.⁷⁵ The ETPV has gained international praise “as an example for the region and the rest of the world” and international organizations have suggested that it “serves as a model of pragmatism and humanity.”⁷⁶ Domestically, the Colombia government has taken a victory lap, as presidential advisor Lucas Gomez stated “by granting Venezuelan migrants temporary protected status for 10 years, we gave them room to breathe and a license to dream.”⁷⁷ Indeed, the Colombian government’s disposition toward open border control measures and the TPS migration policy innovations demonstrated by the PEP, and compounded by the ETPV, are commendable for their intent and novelty. These policies have served to both aid the migrating Venezuelan population and enable effective economic integration to the benefit of society as a whole. However, the political praise for current TPS programs shouldn’t overshadow the continuing difficulties and obstacles faced by many migrants.

⁷⁴ CEM 3, “Estatuto Temporal de Protección” p 15

⁷⁵ Migración Colombia

⁷⁶ “UNHCR and IOM Welcome Colombia’s decision to regularize Venezuelan refugees and migrants”

⁷⁷ BBC, Vanessa Buschschluter, “We gave Venezuelan migrants a license to dream”

2.3 Reflections and Criticisms

Criticism and reflection lie on the path to improvement. Current Colombian TPS policy is commendable for its commitment to provide a legal residency to millions of incoming Venezuelan migrants, with consideration given to finite state infrastructure and the lack of experience dealing with past migration flows. In this context, the Colombian state response has been extraordinary. Potentially even more so if one considers a slew of counterfactual avenues, or contrasts this response with overturned migrant boats in the Mediterranean or the high barbed-wire fences across the southern border of the United States. The Colombian response to the influx of Venezuelan migrants, and the mass TPS program therein, are an example for the rest of the world, not only in their current form, but for the progress they have made, the context in which they have been created, and for the impact that a similar TPS policy can have internationally.

Despite its significant contribution, the ETPV can be strengthened by deepening the legal coverage of the existing program, and the Colombian state has a long road towards full implementation of the rights and guarantees within the ETPV. From the legal perspective, the CEM (Centro de Estudios en Migración / Center for Migration Studies) of the University of Los Andes in Bogota has published multiple reports designed to guide and improve the existing legal protections within the ETPV policy. Here, the legal review of the CEM will be supplemented by the practical limitations expressed by those Venezuelan migrants who are themselves at distinct points in the registration process. That is to say, it will display a contrast of the written policy and the reality on the ground.

The first major limitation lies within the creation of the ETPV itself, as Colombia has no existing migratory framework in its constitution,⁷⁸ the recent TPS measures were all created as Executive Orders of the Presidency and supported by the Foreign Ministry and migration office.⁷⁹ Though the ETPV has a validity of 10 years, and comments by the current Duque administration and most presidential candidates in the upcoming presidential elections in May of 2022 suggest continuity, in theory, the statute could be revoked without warning or congressional oversight. This legal insecurity places large asterisks on the 10 year timeframe of the ETPV.⁸⁰ Sitting alongside a dirt football pitch in Cúcuta, Maria Aguero Morillo commented on the uncertainty that she felt, *“This regularization is based on a presidential decree, and any president can come and change it. So what I say is, let’s see what happens. There is uncertainty. I also applied for political asylum, so I have that protection. But I still have that question, where will I go, what will happen to us? I have a 4 year old child. I wonder what will happen to me if I need to leave, and what will happen to her.”*⁸¹

For the ETPV to maximize its positive impact, it must also be adopted and trusted by the migrating population. While the Colombian government has done well to create a welcoming policy, it has lacked a coordinated state effort to advertise the regularization opportunities to migrant communities, and largely left international organizations to fill the huge informational deficit. Many interviewed respondents expressed confusion of the details of the TPS policies, and none learned of the programs through official sources, but rather through informational outreach by organizations and fellow migrants. While waiting in line for ETPV registration in Bogotá, a young Venezuelan woman named Anji and her sisters explained how this confusion

⁷⁸ Selee and Bolter, “Colombia’s open-door policy” p 6

⁷⁹ CEM 3, “Estatuto Temporal de Protección” p 9

⁸⁰ CEM “Comentarios” p 20

⁸¹ Maria Aguero Morillo, interview and translation by author, Cucuta, May 5 2022

could lead to indifference, “Apparently, there are not a lot of benefits (for having legal status). I know many people who have the physical card, but many places don’t recognize it. Why go through so much trouble for something that doesn’t help you?” ⁸²

Another barrier for more widespread implementation of the ETPV is the efficiency of the process itself. First, “the website capacity is really, really bad. A normal registration process [RUMV] should take 15 or 20 minutes, but it is taking an hour or two hours each time. Because the website crashes.” ⁸³ In fact, I myself witnessed a registration event in the El Salado neighborhood of Cúcuta that faced serious delays due to the failure of the RUMV registration page on the Migracion Colombia website to load, an apparently common and frustrating occurrence. Moreover, though local and international organizations have attempted to fill the gap by organizing mobile registration events, the CEM noted the further isolation and cycle of vulnerability of those without access to the internet or custom of its use, often leaving the most exposed migrants outside of the scope of registration. ⁸⁴ Finally, the Colombian policy must address the legal concerns for the data collected during the RUMV and biometric stages of registration, including the protection of that data and its intended use. ⁸⁵

Understood as a major strength of the ETPV program, the implementation of the 3 month timeframe of the process of legal status regularization has varied. For some, such as Lori Cardoso, the process was smooth “This one [the ETPV] I got in three months, about the estimated time they say”. ⁸⁶ But for others, such as Jose Luis Ramirez, it has taken much longer “The whole process took me about a year. I registered online, but then you have to wait to

⁸² Anji, interview and translation by author, Bogota, May 3 2022

⁸³ Daniel Franco, interview and translation by author, Bogota, May 3 2022

⁸⁴ CEM 3, “Estatuto Temporal de Protección” p 37

⁸⁵ Ibid, p 35

⁸⁶ Lori Cardoso, interview and translation by author, Bogota, May 3 2022

receive a date to arrive for the biometric exam. I did that in December, and it's been 5 months since then."⁸⁷ The temporal efficiency of the registration process depends on the correspondence of both the state and the applicant, but designated Colombian infrastructure should ensure that the ETPV registration proceed as quickly as institutionally possible, as it is the principal mechanism to counteract the precarious status of irregular migrants.

In terms of healthcare coverage and educational access, the CEM concluded that the Colombian state is obligated by law, primarily under articles 12 and 13 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), to provide some level of health and educational service to all.⁸⁸ Even in an unregularized status, Venezuelan migrants in Colombia can receive emergency medical care, and have been allowed to enroll in public schools. With the PPT document resulting from the ETPV migration status regularization program, Venezuelan migrants can access the Colombian healthcare system through an EPS (Empresa Promotora de Salud / Health Promotion Company). However, as the CEM noted "it is one thing to recognize the right to healthcare and education; another is to truly act on ensuring that these two rights are guaranteed to the people who find themselves in vulnerable situations and confront barriers that hinder their access."⁸⁹

Per Circular Conjunta N16 de 2018 (Joint Circular Number 16 of 2018) of the Colombian Ministry of Education,⁹⁰ Venezuelan children can enroll in the public educational facilities available, which, according to the CEM, come in three parts, "In Colombia, education has different facets: it is rights, service, and also an administrative sector".⁹¹ Yet, locally and

⁸⁷ Jose Luis Ramirez, interview and translation by author, Bogota, May 3 2022

⁸⁸ CEM 1, "La Gestion de La Migración en Colombia Hoy" p 23, 30

⁸⁹ Ibid, p 16

⁹⁰ Ministry of Education, "Circular Conjunta N16 de 2018"

⁹¹ CEM 1, "La Gestion de La Migración en Colombia Hoy" p 25

regionally, documental confusion and capacity limitations have demonstrated the gap between policy intention and reality. *“I left Venezuela with my three children, and I came through a trocha, illegally...Here, I tried to enroll my children in a public school, and they told me that there was no space available. I thought about going back to Venezuela, because my children couldn’t study. But later, I went to the Education Secretary’s office, presented my case, and they helped me, they gave me a letter and with that, they accepted my children in the school.”*⁹²

Healthcare was mentioned repeatedly when speaking to individuals registering for the ETPV. Andruval Álvarez was leaving the registration event after he completed his ETPV process and received his PPT on May 3, where Migración Colombia also arranged for EPS registration at the same event. He said *“I’m looking for some stability and access to healthcare, that’s the most important. In Venezuela, it’s difficult, you can’t find a lot of medicine, and if you go to a hospital, sometimes there are no doctors there...Sometimes a medical appointment can cost 20 dollars, and you only have 30 for the month. Imagine.”*⁹³ A young Venezuelan mother, Lori Cardoso, also suggested that her main motivation for ETPV registration was healthcare *“I have always had legal status here, thank god. But my daughter didn’t. We really suffered because of that, they would only accept her for emergency appointments. She couldn’t get regular checkups.”*⁹⁴ Most migrants expressed some level of satisfaction with the access to healthcare granted by the ETPV, in that the difficulties that they experience are the same difficulties that Colombians themselves feel while interacting with an EPS, the inefficiency and bureaucracy of a subsidized public healthcare system. Oscar Pecheco commented that, *“For me, I could access the*

⁹² Bismary Duran Gonzalez, interview and translation by author, Cucuta, May 5 2022

⁹³ Andruval Alvares, interview and translation by author, Bogota, May 3 2022

⁹⁴ Lori Cardoso, interview and translation by author, Bogota, May 3 2022

*national healthcare system, but for other things, like a bank account or formal employment, there are a lot of difficulties.”*⁹⁵

The largest gap between access and success is in the labor market. In all of Latin America, the informal employment sector is widespread, and roughly half of Colombians work informally.⁹⁶ While an informal employment status can translate to less pay, less security and less labor rights, as well as less contribution to state institutions, it can also result in easy access to a temporary job, and a quick paycheck. In mid 2019, government statistics estimated that over 80 percent of Venezuelans in Colombia were working in some capacity, with 77 percent of those working in the informal sector.⁹⁷ Glory Garcia vocalized such a dynamic *“I came here because of the situation in Venezuela, now I am trying to get the temporary status because I already have a job offer, but they won’t give it to me until I have the physical document. Right now, I can only work an informal job on Saturday and Sunday, but once I get the legal status, I can get a contract.”*⁹⁸ Moreover, Nicolai Mantilla from the organization Nueva Ilusión voiced concern for the next stage of labor access, not only to subsistence positions, but to dignified, professional opportunities, *“We have the right to work, but the labor opportunities are almost zero. We are regularized, but unemployed. Right now the benefits are more expected benefits than real benefits. If Colombia had a larger and more ambitious labor market, it could be a win-win. But finding an official, professional place in Colombia right now is very difficult.”*⁹⁹ Finally, a young Venezuelan man named Fernando Oliviera quickly expressed the adverse situation for both sides, and said with a laugh, *“Without formal status, it’s more difficult to get a*

⁹⁵ Oscar Pecheco, interview and translation by author, Bogota, May 3 2022

⁹⁶ Selee and Bolter, “Colombia’s open-door policy” p 13

⁹⁷ Selee and Bolter, “Colombia’s open-door policy” p 13

⁹⁸ Glory Garcia, interview and translation by author, Bogota, May 3 2022

⁹⁹ Nicolai Mantilla, interview and translation by author, Cucuta, May 6 2022

job. It's also difficult with legal status. To be honest, it's difficult for Venezuelans and for Colombians.”¹⁰⁰

In addition to the five key facets of information, access, education, healthcare and employment, the depth of the CEM report noted the need for a differential approach sensitive to specific migrant groups and the challenges they face, such as the risk of trafficking faced primarily by women, the vulnerabilities of young children, and the discrimination faced by LGBTQ+ migrant communities.¹⁰¹ Moreover, the Colombian state remains the ultimate judge and jury for migration matters, and must elaborate legally on the nature of rejection and exclusion to ETPV applications, to which it currently provides no complementary justification.¹⁰² If the goal of the ongoing policy is to maximize coverage and registration to the migrant community, an ample and accessible ETPV program must consider those excluded by the policy as written.

The Colombian state response has predominantly provided a pathway for Venezuelan migrants to gain legal migratory status, and subsequently access healthcare, education, and official employment. However, the state must do more than check policy boxes, it must ensure fair and equal implementation of such policy, and continue to innovate toward future integration. To truly highlight the positive and negative outcomes of the case of emergency migration from Venezuela to Colombia and the resulting TPS policies, I want to include the stories of three inspiring women. Bismary Duran González, María Agüero Murillo and Vilmary del Carmen Ulacio all work for the ACNUR (Spanish acronym for UNHCR) as volunteers, and having migrated and registered for the program themselves, they now travel to areas in Cúcuta to assist

¹⁰⁰ Fernando Oliviera, interview and translation by author, Bogota, May 3 2022

¹⁰¹ CEM 3, “Estatuto Temporal de Protección” p 26

¹⁰² Ibid, p 22

other Venezuelans to gain the legal rights and opportunities of the ETPV. They each share their personal journey of how they migrated, the struggle of restarting everything anew and building a life in Colombia, and why they have decided to work with the ACNUR to help their fellow Venezuelans. Here, I will let their words stand alone:

Bismary Duran González

“Many people here say that we are accustomed to receiving. That’s not true, we came here to work. I am a professional person, I worked, got a car and a house, then this happens in your country. And now it is difficult to start over from zero, at my age with three kids. My kids were my motivation to leave, they used to ask me, ‘mama, when will we eat arepas’ and I only had platano. It was difficult. No one wants to leave their community and their things”

“I worked here doing things that I could never have imagined. Never. I sold cheese house to house; with my kids walking with me in the street...I have had to go through some hungry days here, with my kids. I thought, I would rather go back and be hungry in my own house, but I didn’t have the money to return”

“I do this because I like it. I love this volunteership and to work in my neighborhood, where there are many people in need...I understand their situation. Some questions ask ‘have you ever experienced extreme need or have you slept in the street?’ and it is a bit embarrassing to say that to a Colombian because they think that you will ask for something. But with other Venezuelans, we understand each other. I was in their place five years ago, and now I can help.”

María Agüero Morillo

“My passport was expired, so because of that, obviously, I entered illegally. But then after I could get an entry stamp with the PEP, even though my passport was expired.”

“I had a case of a man that was collecting recycling in the street, and that showed me a photo of his graduation card, he graduated from the Universidad Central de Venezuela in Caracas as a nurse. People don’t believe it, but there is real need. There are good days and there are bad days.

“The PPT is a practice run, and it has achieved more than what I expected. I am satisfied with that.”

Vilmary del Carmen Sánchez Ulacio

“I don’t have a passport. I tried to get one in Venezuela, but they never gave it to me. So I left Venezuela without a passport, and entered Colombia with a border crossing ID, then I heard about the PEP in 2018, but they didn’t say what it was about. Many people thought it was just a census. But we did it and got it, and it helped.”

“At least we are here working in this jacket [with ACNUR]. There are many people that ask, as Venezuelans, how are we working in this place? It is because we have the right to. That happens a lot, but its part of the process, you have to accept these things little by little. At first, I got depressed. I was selling platano house to house, and people were shutting the door in my face, and some said ‘don’t even talk to Venezuelans’. I would go home and cry.”

“To tell you the truth, this is a great opportunity. This is the first time that I am officially working in Colombia, doing this volunteership with ACNUR. To know that there are people in

need, and that we went through the same thing, and now we can help people get registered, it is super satisfying and makes us happy.”

The power of successful migration policy is to understand that as individuals arrive to cross a border, they bring with them a past and a future. Often, the past can include difficult moments, but it can also include the development of skills and motivations. In Venezuela, millions of those who worked, progressed and contributed to society could only watch as their savings became valueless. Now, for those who chose to migrate and leave behind their home, a future of opportunity should be available to them. Though yet imperfect, the Colombian state response has sought to provide that opportunity. Rather than fall into a cycle of poverty, these women and many others like them demonstrate how immigrant communities can contribute to a cycle of prosperity.

CHAPTER 3 – THE POLITICS OF INTERNATIONAL MIGRATION

3.1 *Social, Political and International Considerations*

The modern study of International Relations is the theoretical glue that holds many fields of political study together. No policy can occur in a vacuum, and the domestic and international have increasingly blended together as state sovereignty has given way to global cooperation. Migration has always been a matter of relations between states, from traditional border controls and visa regimes to the impact of diaspora communities on local political outcomes.¹⁰³ Thus far, this study has provided an overview of common theories of migration policy, contrasted the main systems of asylum and TPS, and analyzed the innovative case of Colombian TPS policy. It has investigated the current ETPV temporary status policy by examining the contents of the policy as written, mirrored its contents with academic and legal critics, included the practical aspects of implementation, and listened to the experiences of those impacted by the TPS policy. To complete this comprehensive framework of policy analysis, the role of both social and political factors specific to the Venezuelan-Colombian context must be considered, before then placing the ETPV into an international setting.

Domestically, there is no doubt that political disposition and media rhetoric impact the formulation of a country's migration regulation. The relationship between neighboring states is also a factor, as seen in the ongoing cases of bargaining between states to host refugee communities.¹⁰⁴ In recent history, the conservative, United States-backed Colombian government of Ivan Duque has not been friendly with the authoritarian, leftist Venezuelan government of Nicolas Maduro. Based on opposite sides of the political spectrum, each has been a vocal opponent of the other. The latter has accused the former of sponsoring numerous failed

¹⁰³ Weiner, "On International Migration and International Relations" p 442

¹⁰⁴ Kaya, "Migration as a Leverage Tool in International Relations" p 21

assassination attempts on the leader of the Bolivarian Republic of Venezuela,¹⁰⁵ while Colombia was also quick to support the attempt of opposition politician and National Assembly leader Juan Guaidó to take control of the Venezuelan government.¹⁰⁶ Interestingly, the political friction between these two neighbors has warmed the Colombian response by employing both predominantly open migration policy and positive official rhetoric about the treatment of incoming Venezuelan migrants. Such implications suggest that the Colombian response was motivated not only by pragmatism, but by a desire to show the systematic superiority of Colombian governance in the face of Venezuela's economic collapse, and to gain international recognition in the process.

Culture has often been injected into the debate around migration, primarily in reference to the dialectic between "assimilation and separation".¹⁰⁷ This paper diverges from that course of study to suggest a link between the cultural overlap of the migrating and host communities, and the policy tools used by the state to react to a specific migration phenomenon. The Colombian case demonstrates that, even in the face of politically opposing forces, the similarity of language, history, religion and ethnicity often link communities across borders and override governmental disagreement to open the door for mutually beneficial migration policy. Through expanded use of TPS measures, states can enact a change to lessen the divide between the differential treatment of migrant groups as seen by rigorous asylum procedures in predominately western governments. Many Colombians and Venezuelans have expressed as much:

¹⁰⁵ The Gaurdian AP, "Colombia back plot to assassinate me"

¹⁰⁶ Embajada de la Rep Bol. De Venezuela, "Reconocimiento del Gobierno Colombiano"

¹⁰⁷ Epstein and Gang, "Migration and Culture" p 2

“To a certain point, you can say that Colombians can identify with this situation, and that’s why we are providing this type of protection.”¹⁰⁸

“To me, there are no borders between Colombia and Venezuela, we are just human beings. Nationality or where you were born is not important.”¹⁰⁹

Internationally, Turkey presents a corresponding case similar to that of Colombia’s response to Venezuelan migration in Latin America. As of 2021, Turkey was hosting more than 3.5 million Syrians, and Turkish legislation enacted a TPS program to grant complementary rights and legal status to its large migrant population. In fact, Turkish scholars have appealed for greater international discussion about the potential for complementary TPS programs to counteract the waning efficiency of asylum structures in response to mass migration,¹¹⁰ a similar argument as is made here using a Latin American example.

As a recent EU directive announced a TPS measure for Ukrainian citizens fleeing war in Europe,¹¹¹ a trend has emerged in the modern era of migration and migration policy utilized by countries around the world. Countries that neighbor a migration exodus, where historical and cultural ties are more likely to overlap with the migrating population, more often implement a TPS program that offers a quick path to legal status and a broad range of access and opportunity, while more distant countries rely on individual, case by case asylum structures that directly or indirectly limit migrant intake. By creating agreed-upon international standards of TPS policy to complement existing asylum programs, nations can lessen the distance between its people, and harness the beneficial power of migration.

¹⁰⁸ Daniel Franco, interview and translation by author, Bogota, May 3 2022

¹⁰⁹ Bismary Duran Gonzalez, interview and translation by author, Cucuta, May 5 2022

¹¹⁰ Zenginkuzucu, “A Comparative Analysis on Internatinal Refugee Law and Temporary Protection” p 405

¹¹¹ Fragomen, “EU Member States Start Implementing Temporary Protected Status Directive”

3.2 Conclusion

This thesis project began by situating itself within the modern context of migration and international migration policy, before then interacting with existing literature that contemplates the challenges of a changing world and the movement of people therein. Although the traditional asylum protections established by the UN under international refugee law continue to serve the most vulnerable global populations, this analysis discusses the potential for an internationally recognized alternative coverage to migrating communities through a framework of Temporary Protected Status. Due to the limited legal scope of refugee protection and the inherent institutional difficulty of individual assessment, coupled with the transitional recognition of the needs of mixed migration flows, an international TPS structure that expands institutional capacity, permits a large scope of legal rights, and addresses humanitarian concerns can complement existing asylum structures to create a more comprehensive international system of migration policy.

To base this recommendation on evidence, this paper analyzed the ongoing TPS measures of the Colombian government in reaction to one of the world largest flows of emergency migration, the exodus of Venezuelan migrants into Latin America. Through an investigation of academic sources and official policy documents, and complemented by interviews with Venezuelans currently engaging the TPS program in Colombia, this report found the ongoing ETPV program to be an innovative and effective policy approach that opened the door to millions of incoming migrants while also considering the economic, institutional and humanitarian factors involved. Moreover, the Colombian case offered hints concerning the motivating pulse of specific migration policy adoption, mainly the political and cultural components, how a comprehensive TPS policy can further the equal treatment of migrant groups.

As each state contemplates the changing trends of migration and plots their next step, the potential of an expansive and complementary TPS system could lead to a path forward for migration policy.

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