

The spirit of Cartagena? Applying the extended refugee definition to Venezuelans in Latin America

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Despite the widespread incorporation of the expanded ‘Cartagena definition’ of refugee into their national asylum frameworks, States in Latin America must do more to apply this definition – and resulting protection – to displaced Venezuelans.

Venezuela’s political, economic and humanitarian crisis has led to one of the largest contemporary situations of displacement. Latin America and the Caribbean hosts around 3.7 million of the more than 4.5 million people who have left the country since 2015, and it is estimated

that the number of displaced Venezuelans globally may reach over 8 million in 2020.¹

In early 2020, Colombia officially hosted 1.63 million, Peru 864,000, Ecuador 385,000 and Chile 372,000 Venezuelans. Globally, just under 770,000 had applied for asylum.² The highest numbers of applications have

been received by Peru (with 395,000 pending applications in early January 2020) and Brazil (130,000 pending applications at the end of November 2019), with other countries in the region receiving far fewer requests.³ In comparison with the scale of the Venezuelan displacement, the overall number of asylum applications is relatively low. This can be partly explained by the special residence programmes offered to Venezuelans by several countries, principally by Colombia, where 640,000 Venezuelans had regularised their presence by the end of October 2019. Other factors contributing to the relatively low numbers of asylum applications are that many Venezuelans are not familiar with the regional definition of refugee or do not want to limit their freedom of movement – a potential consequence of obtaining asylum seeker status – in order to be able to visit relatives in Venezuela. Nevertheless, asylum applications by Venezuelans have steadily increased, almost tripling globally each year since 2015. Refugee recognition rates, on the other hand, remain extremely low: between 2014 and 2018, Peru granted only 629 applications and rejected 739, leaving 227,325 requests pending at the end of 2018.⁴ Over the same period Mexico accepted 4,415 of 10,845 applications, Colombia just 79 and Brazil only 22. One sign of hope, however, is that Brazil accepted over 37,000 Venezuelan applications between December 2019 and January 2020, applying the Cartagena definition.

In light of the steady increase in Venezuelan asylum applications in Latin America – which have reached significant numbers in some countries such as Peru and Brazil – but the generally low recognition rates by States in the region, it is important to analyse whether the extended definition of the Cartagena Declaration on Refugees (the Cartagena Declaration) applies to the displacement of Venezuelans. The Venezuelan crisis thus represents one of the first crucial tests of the application of the expanded refugee definition in the region.

Cartagena and national regulations

The Cartagena Declaration was adopted in 1984 and States noted that: “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 refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order”.⁵

The Cartagena Declaration is a non-binding regional instrument that does not eliminate or replace the traditional definition of refugee status; rather, it complements it by extending protection to persons based on additional grounds linked to their country or region of origin. This definition starts from a collective vision that analyses the situation of the country of origin, unlike the traditional definition, which is focused on the case-by-case analysis of individual persecution.

Although the Declaration is not binding, most countries in Latin America (with the exceptions of Cuba, Panama, the Dominican Republic, Trinidad and Tobago and Venezuela) have incorporated both the traditional definition of the 1951 Convention as well as the extended Cartagena Declaration definition (either in its entirety or with some modifications) into their asylum frameworks. Such incorporation implies that States have turned this ‘soft law’ definition into a binding concept. This led UNHCR to describe Latin America as the new world leader in refugee protection, even surpassing Europe as a model of human rights-based refugee legislation (albeit before the onset of the Venezuelan displacement crisis).⁶

In a May 2019 guidance note, UNHCR emphasised that the extended definition should be applied to the majority of Venezuelan asylum seekers.⁷ It could be argued that interpretations of “generalised violence”, “massive violation of human rights” and “disturbance to public order” vary and thus hinder the recognition of applications within the framework of Cartagena. At the same time, the UN and other organisations have explicitly denounced situations of threats to public order, general violence and violations of human rights in Venezuela.

For example, a July 2018 report by the Office of the UN High Commissioner for Human Rights argued that in Venezuela there have been violations of the right to health and access to justice, food, freedom of opinion and expression, as well as arbitrary detention, torture, disappearances and violation of the freedom of peaceful assembly.⁸ Between 2013 and 2019, the Organization of American States (OAS) and the Inter-American Commission on Human Rights issued more than 60 communications on the political, social and humanitarian situation of Venezuela, several of which point to serious human rights violations. In the same vein, the States in the region have themselves denounced the situation in Venezuela, for example through the declarations of the Lima Group. Despite these political pronouncements, with the exception of Mexico and Brazil, none have chosen to apply the extended definition to applicants of Venezuelan nationality. In November 2019 Colombia announced that such an application was being considered, but in January 2020 implemented new migratory regularisation measures instead.

Factors at play

We suggest three reasons are at play in this contradiction between denouncement of human rights violations in Venezuela and the lack of refugee recognition according to Cartagena. First, there is widespread lack of experience and technical capacity. The main host countries of Venezuelan migrants and asylum seekers have little or no experience in receiving migrants and refugees. Although they have benevolent laws on asylum and migration, they had never had to apply them to a large number of people.

Secondly, applying the Cartagena Declaration definition of refugee would mean recognising a large number of people as refugees, especially in the Peruvian case, and giving them unlimited access to social protection including health care. The potential fiscal cost of this application in countries with largely informal labour markets and already precarious welfare systems is high.

Thirdly, and relating to the previous point, is the fear that 'pull factors' will

attract many more Venezuelans, putting more pressure on public services, which are already overburdened, further propelling xenophobia⁹ and potentially empowering extremist political forces.

Given these domestic concerns, a joint decision by Latin American States to apply the Cartagena definition to Venezuelans on a *prima facie* basis would significantly strengthen refugee protection in the region. If countries continue to resist applying the definition, they risk undermining not only their domestic legislation but also the spirit of Cartagena and decades of progress in terms of protection.

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For more on responses to displacement in Latin America, see the October 2017 FMR issue on 'Latin America and the Caribbean: building on a tradition of protection'. www.fmreview.org/latinamerica-caribbean

