

## Falling short of protection: Peru's new migration scheme for Venezuelans

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**Peru's introduction of a new work and study permit for Venezuelans fleeing violence in their country is to be applauded – but it provides only a limited, temporary form of protection.**

State repression, looting and civil violence have left Venezuelans in a state of uneasiness and fear, with the erosion of the country's socio-political stability further exacerbated by shortages of food and medicine, crippling inflation and a dramatic devaluation of the Venezuelan currency. With each passing day, as the situation deteriorates, the applicability to Venezuelans of the international definition of refugee becomes increasingly justifiable.

In addition to both the 1951 Refugee Convention and its 1967 Protocol, to which the vast majority of Latin American countries are signatories, the continent has demonstrated a coordinated effort to strengthen its regional framework for the forcibly displaced. The Cartagena Declaration in 1984, the 1994 San José Declaration, the 2004 Mexico Declaration and the 2014 Brazil Declaration all serve as testaments to a commitment to protecting those with well-founded fear of persecution. The response to those fleeing Venezuela, however, exemplifies how much there remains to achieve, particularly in terms of the implementation of these instruments. For instance, despite receiving 4,670 requests for asylum from Venezuelans between 2012 and 2016, Brazil's Ministry of Justice has only assessed a total of 89 applications.<sup>1</sup> For those wanting to flee to Colombia, a different challenge arises, where regular border closures and violence in its eastern region have impeded Venezuelans from seeking asylum.

### Protection options

Of all Latin American countries hosting Venezuelans, Peru merits recognition for its new temporary work/study permit scheme. The Permiso Temporal de Permanencia (PTP)<sup>2</sup> is a work and study permit provided exclusively to Venezuelan citizens for a period

of one year, with the possibility of renewal. The new programme has been praised by the international community, including by the Inter-American Commission on Human Rights which has called it "an example for the region of how States can protect migrants who are in a vulnerable situation by regularizing migration."<sup>3</sup> According to Eduardo Sevilla Echevarría, Superintendent of Migration, over 10,000 Venezuelans have been approved for the PTP as of late July 2017.<sup>4</sup>

However, it appears that migration officials may be promoting the PTP in place of providing information about other more durable and wider-ranging protection pathways. This was the case for José, a former business owner in Venezuela. When passing through border control at the airport in Lima, José notified the migration officer that he wished to apply for asylum but "they said I was only eligible for the PTP." Considering that Peru has national asylum legislation dating back to 2003,<sup>5</sup> it is surprising that Lima's migration office failed to provide adequate information about asylum procedures.

Testimonials from applicants and beneficiaries around Lima suggest that José is not the only Venezuelan being misinformed on their right to seek asylum. When María applied for the PTP, she noticed that it did not explicitly guarantee access to certain rights that would normally be accorded to refugees. "I fled from an area with heavy violence in Venezuela and I was aware that, with the expanded refugee definition found in the Cartagena Declaration, I would probably be eligible for refugee status," María explained, adding that she did not necessarily want to receive formal refugee status but rather wanted to have a legal guarantee that she

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and her children would have access to health facilities and basic assistance. However, after multiple visits to the migration office and numerous telephone conversations with UNHCR staff members (who were unclear about the overlap between the PTP and Peru's asylum legislation), she – like José – had to accept the PTP as her only option.

### Implementation falling behind international standards

Latin America is widely recognised for having developed some of the most innovative protection mechanisms for forced migrants. At the forefront has been the 1984 Cartagena Declaration, setting the stage for a multitude of regional dialogues focused on international protection. However, it is also critical to acknowledge that these declarations, plans of action, recommendations and conclusions are largely non-binding, and that in Latin America “most of the existing refugee status determination bodies still lack the training, efficiency, independence, and expertise that are to be found in other parts of the world.”<sup>6</sup> Furthermore, since the end of the 1990s Latin American governments have devised asylum legislation at the national level but these instruments tend to “fall short of international standards in terms of duration and scope of protection [and] lack important refugee rights such as the right to access fair and efficient refugee status determination procedures.”<sup>7</sup>

Peru is not exempt from these realities and although the PTP has allowed many Venezuelans to gain safety, there needs to be a debate about whether or not it is meeting its responsibilities towards those Venezuelans whose cases should rather be decided through a proper refugee status determination process. Considering that the 1984 Cartagena Declaration expands the definition of what constitutes a refugee, extending this status to those fleeing their country due to “generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order”,<sup>8</sup> the abundant

evidence on Venezuela's conflict shows that those fleeing have a legitimate claim to apply for international protection. Having incorporated the expanded refugee definition within its national legislation, Peru has a formal responsibility towards facilitating this process. In practice, the PTP can contribute to Peru potentially circumventing this responsibility as Venezuelan migrants are likely to be assessed on a *prima facie* basis, leaving them misinformed about other protection schemes available under Peruvian law.

While Peru receives praise for hosting Venezuelans, it must be understood that the PTP is not a protection instrument guaranteeing a breadth of rights. On paper, it is simply a residence permit allowing Venezuelans to work and study for a period of one year and, although this may be suitable for some applicants, it is not appropriate for those who have fled their country because their lives, safety and freedom are threatened. Peru's PTP should therefore not be viewed as the new standard for protecting those fleeing crisis, conflict and violence within Latin America as this would risk propagating a discourse and practice based on generosity and goodwill rather than one based on rights.

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