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Migrants Under Human Rights Law

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List of Abbreviations

ACHR	American Convention on Human Rights
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
ESCR Committee	Committee on Economic, Social and Cultural Rights
ETPV	Estatuto Temporal de Protección para Migrantes Venezolanos [Temporary Protection Statute for Venezuelan Migrants]
GCM	Global Compact for Migration
GDP	Gross Domestic Product
HRC	Human Rights Council
IACtHR	InterAmerican Court of Human Rights
IACHR	InterAmerican Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
OAS	Organization of American States
PECP	Permiso Especial Complementario de Permanencia [Special Complementary Permanence Permit]
PEP	Permiso Especial de Permanencia [Special Permit of Permanence]
PEPFF	Permiso Especial de Permanencia para el Fomento de la Formalización [Special Permit of Permanence for the Promotion of Formalization]
PIM	Política Integral Migratoria [Comprehensive Migration Policy]
PIP	Permiso de Ingreso y Permanencia [Entry and Permanence Permit]
PPT	Permiso por Protección Temporal [Temporary Protection Permit]
RAMV	Registro Administrativo de Migrantes Venezolanos [Administrative Registry of Venezuelan Migrants]

RUMV	Registro Único de Migrantes Venezolanos [Single Registry of Venezuelan Migrants]
SNM	Sistema Nacional de Migraciones [National Migration System]
TMF	Tarjeta de Movilidad Fronteriza [Border Mobility Card]
US	United States

Abstract

This thesis explores Colombia's Temporary Protection Statute for Venezuelan Migrants (ETPV) as an innovative legal tool to respond to the massive Venezuelan displacement crisis. It evaluates the statute from the perspective of international human rights law and identifies three main shortcomings: the lack of special measures to guarantee conditions of equality in practice, the absence of a gender-based approach, and insufficient procedural guarantees. Drawing primarily on the jurisprudence of the Inter-American Court of Human Rights, universal and regional human rights treaties, the thesis proposes key points for a reform to ensure full compliance with human rights standards. It concludes that the ETPV, while innovative and progressive, requires a reform to reach its potential as a lasting model based on the special rights of migrants.

Zusammenfassung

Diese Arbeit untersucht das kolumbianische Gesetz zum vorübergehenden Schutz venezolanischer Migranten (ETPV) als innovatives Rechtsinstrument zur Bewältigung der massiven Vertreibungskrise in Venezuela. Sie bewertet das Gesetz aus der Perspektive der internationalen Menschenrechtsgesetze und identifiziert drei wesentliche Mängel: das Fehlen besonderer Maßnahmen zur Gewährleistung der Gleichberechtigung in der Praxis, das Fehlen eines geschlechtsspezifischen Ansatzes und unzureichende Verfahrensgarantien. Unter Berufung vor allem auf die Rechtsprechung des Interamerikanischen Gerichtshofs für Menschenrechte sowie auf universelle und regionale Menschenrechtsverträge schlägt die Arbeit verschiedene Punkte zur Reform vor, um die vollständige Einhaltung der Menschenrechtsstandards zu gewährleisten. Sie kommt zu dem Schluss, dass das ETPV zwar innovativ und fortschrittlich ist, aber reformiert werden muss, um sein Potenzial als dauerhaftes Modell auf der Grundlage der besonderen Rechte von Migranten auszuschöpfen.

Resumen

Esta tesis explora el Estatuto Temporal de Protección para Migrantes Venezolanos (ETPV) de Colombia como una herramienta legal innovadora para responder a la crisis de desplazamiento masivo venezolano. Evalúa el estatuto desde la perspectiva del derecho internacional de los derechos humanos e identifica tres deficiencias principales: la falta de medidas especiales para

garantizar condiciones de igualdad en práctica, la ausencia de un enfoque basado en el género y las garantías procesales insuficientes. Basándose mayormente en la jurisprudencia de la Corte Interamericana de Derechos Humanos y los tratados sobre derechos fundamentales universales y regionales, el trabajo propone ciertos puntos a reformar para garantizar el total cumplimiento de las normas de derechos humanos. Concluye que el ETPV, aunque innovador y progresivo, requiere una reforma para alcanzar su potencial como modelo duradero y basado en los derechos especiales de los migrantes.

I. Introduction

Previously, Venezuela had been the biggest recipient of Colombian migrants, mostly during the 1990's and the 2000's, due to the armed conflict in Colombia. However, from 2015 onwards, a major shift occurred.¹ Today, nearly 7.9 million people have left Venezuela², of whom 2.845.706 have found refuge, whether temporarily en route to another destination or permanently, in Colombia.³ Although the number of Venezuelans residing in Colombia has consistently decreased in recent years⁴, a significant number of Venezuelan nationals in need of protection still remain in Colombia.

Venezuelans began fleeing their country after the collapse in oil prices triggered not only an economic breakdown, but also a political, social, and humanitarian crisis. This crisis had not been anticipated by either of the two countries examined in this paper, Colombia and Venezuela.⁵

Even if unexpected, Colombia could not, and to some extent did not, ignore its responsibilities concerning the human rights of Venezuelan migrants. As a party to various global and regional treaties that protect human rights, especially those of migrants and other vulnerable populations whose needs are heightened during displacement, Colombia was obliged to take fast and practical measures to protect the large numbers of Venezuelans arriving in the country, both legally and irregularly.

Moreover, the Constitutional Court of Colombia has affirmed that the human rights of migrants, including those with irregular migration status, cannot be denied or limited in their scope of protection.⁶

¹ Sandro Pirovino and Elissaios Papyrakis, 'Understanding the Global Patterns of Venezuelan Migration: Determinants of an Expanding Diaspora' (2023) 10(1) *Development Studies Research* 214756 <https://doi.org/10.1080/21665095.2022.2147561>, 2.

² United Nations High Commissioner for Refugees (UNHCR), 'Venezuela Situation' <https://www.unhcr.org/emergencies/venezuela-situation> accessed 20 of July 2025.

³ Observatorio de Migraciones, Migrantes y Movilidad Humana (OM3), *Informe de migrantes venezolanos(os) en Colombia: Estimación a febrero 29 de 2024* (Migración Colombia, March 2024), 6 <https://www.migracioncolombia.gov.co/infografias-migracion-colombia/informe-de-migrantes-venezolanos-en-colombia-en-febrero>.

⁴ *Ibid* 10.

⁵ Juan Thomas Ordóñez and Hugo Eduardo Ramírez Arcos, 'At the Crossroads of Uncertainty: Venezuelan Migration to Colombia' (2019) 18(2) *Journal of Latin American Geography* 158, 163 <https://www.jstor.org/stable/48619335>.

⁶ Sentencia C-288/09 (Corte Constitucional de Colombia, 29 April 2009) <https://www.corteconstitucional.gov.co/relatoria/2009/c-288-09.htm>

Although Colombia's response to the Venezuelan migration crisis has been nationally and internationally praised⁷, the full protection of Venezuelan migrants' human rights has not yet been fully achieved, either under national jurisprudence or in accordance with international human rights treaties. With the adoption of the current regulation, the *Estatuto Temporal de Protección para Migrantes Venezolanos* (ETPV)⁸, composed of the *Registro único de Migrantes Venezolanos* (RUMV)⁹ and the *Permiso de Protección Temporal* (PPT)¹⁰, the Colombian government intended to regularize the migration status of the Venezuelan population. This initiative aimed to grant them access to public and private services, the Colombian labor market, and thereby strengthen the protection of their human rights.

This thesis therefore explores the ETPV in the light of Colombia's binding obligations under international human rights law. It argues that the regulations constitute a progressive response to mass displacement, but that they still reveal important shortcomings. In particular, the thesis highlights protection gaps regarding the right to equality and non-discrimination, the absence of a gender-based approach, the insufficiency of procedural guarantees, and risks concerning the right to privacy in the field of data protection.

The following chapters will compare and contrast Colombian migration regulations with Colombia's international obligations with respect to the human rights of Venezuelan migrants. The strengths and weaknesses of these regulations, particularly regarding rights protection, will be discussed. Finally, recommendations for future law reforms, policies, or practices will be proposed to improve the integration of the Venezuelan community in Colombia and to close existing protection gaps.

⁷ Ordóñez and Ramírez Arcos (n 5) 160; Gracy Pelacani and others, *Estatuto Temporal de Protección para Migrantes Venezolanos: Reflexiones de una política de regularización migratoria* (Centro de Estudios en Migración (CEM), August 2021) 22 <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>.

⁸ In English: Temporary Protection Statute for Venezuelan Migrants.

⁹ In English: Single Registry for Venezuelan Migrants.

¹⁰ In English: Temporary Protection Permit.

II. Context of the Displacement Wave

The crash in oil prices in 2014 triggered the economic downfall of what was previously one of the most prosperous countries in Latin America.¹¹ Venezuela has the world's largest crude oil reserves with 303,008 million barrels by the end of 2024.¹² Therefore, it is no surprise that its economy depends almost entirely on the oil market and high oil prices. When oil prices fell from an annual average of 104 dollars per barrel in 2013 to 43 dollars per barrel in 2016,¹³ Venezuela's economy collapsed, which leading to the economic, political, social and humanitarian crisis that persists to this day.

With Venezuela's gross domestic product (GDP) shrinking by an estimated three quarters between 2014 and 2021, its high debt of around 150 billion dollars, gross mismanagement of the economic crisis and international sanctions imposed due to its authoritarian government, hyperinflation became inevitable, reaching more than 80.000% annually by 2018.¹⁴

However, the economic collapse of the country is not the sole reason of the displacement wave of almost 7,9 million Venezuelans.¹⁵ According to various surveys, Venezuelans cite not only economic reasons, but also safety and political concerns as motivations for their migration.¹⁶

Nicolás Maduro's regime has become increasingly repressive with each year of the crisis in order to maintain power. There have been numerous reports of extrajudicial violence and killings, arbitrary detentions, censorship, forced disappearances, torture, and other forms of inhuman or degrading treatment directed at opponents of the regime.¹⁷ Efforts to hold perpetrators accountable for these clear human rights violations are virtually impossible, as the

¹¹ Congressional Research Service, *Venezuela: Background and US Relations* (CRS Report for Congress R44841, 6 December 2022) 8 <https://sgp.fas.org/crs/row/R44841.pdf>.

¹² Organization of the Petroleum Exporting Countries (OPEC), *Annual Statistical Bulletin 2024* (OPEC 2024) 22 <https://www.opec.org/assets/assetdb/asb-2024.pdf>.

¹³ Pirovino and Papyrakis (n 1) 1.

¹⁴ Steve H Hanke, 'Venezuela's Hyperinflation Hits 80,000% Per Year in 2018' *Forbes* (1 January 2019) <https://www.forbes.com/sites/stevehanke/2019/01/01/venezuelas-hyperinflation-hits-80000-per-year-in-2018/> accessed 20 July 2025.

¹⁵ UNHCR (n 2).

¹⁶ A Weitzman et al, 'The Venezuelan Humanitarian Crisis, Out-Migration, and Household Change Among Venezuelans in Venezuela and Abroad' (2024) 61(3) *Demography* 737 <https://read.dukeupress.edu/demography/article/61/3/737/387622/The-Venezuelan-Humanitarian-Crisis-Out-Migration>, 739.

¹⁷ Human Rights Watch, *World Report 2022: Venezuela* (Human Rights Watch, 2022) <https://www.hrw.org/world-report/2022/country-chapters/venezuela> accessed 25 July 2025; Congressional Research Service (n 11) 10; UN Human Rights Council, *Detailed Findings of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela* (57th sess, 14 October 2024) UN Doc A/HRC/57/CRP.5, 29 <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session57/advance-versions/a-hrc-57-crp-5-en.pdf>.

judiciary is not independent from the executive and functions as an extension of Maduro's regime.¹⁸

In 2018, Maduro was *re-elected* in an electoral process that failed to meet all democratic standards, leading important international actors to deny the recognition of his presidency and to harsh economic sanctions imposed by the US Government,¹⁹ further aggravating the economic crisis. An attempt to establish an alternative government failed when Juan Guaidó was elected interim president by the National Assembly and recognized by nearly 60 countries as such,²⁰ but then failed to win over the power of the country.

The political and economic crisis led also to a breakdown of social services and food and medical supplies shortages, creating one of the largest humanitarian crises in the region. Basic needs of the population couldn't be met. According to the World Food Program of the United Nations, 9.3 million Venezuelans suffered from food insecurity, with a large amount of the population experiencing acute malnutrition.²¹ The collapse of the health system during the COVID-19 pandemic further worsened the humanitarian crisis. In addition, safety concerns arose through the population due to the violent repression regime and growing crime rates linked to scarcity and instability.

Venezuela and Colombia share a 2.2019-kilometer border, facilitating the entry to Colombia for the Venezuelans fleeing this multifaceted crisis. In February of 2024, the Venezuelan population in Colombia reached 2.845.706 habitants,²² accounting for 5% of Colombia's total population.²³ This trend positioned Colombia as the third largest host country for displaced people in need of protection in 2024, only after the Islamic Republic of Iran and Türkiye.²⁴

Also Colombians who fled the armed conflict in their own country and settled in Venezuela returned, often accompanied by Venezuelans friends and family. Key factors for Venezuelans

¹⁸Bertelsmann Stiftung, *BTI 2024 Country Report - Venezuela* (Bertelsmann Stiftung 2024) 11-12 https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2024_VEN.pdf.

¹⁹*Ibid* 5.

²⁰Congressional Research Service (n 11) 9.

²¹Human Rights Watch (n 17).

²²OM3 (n 3) 6.

²³Paula Rossiasco and Patricia de Narváez, *Adapting Public Policies in Response to an Unprecedented Influx of Refugees and Migrants: Colombia Case Study of Migration from Venezuela* (World Bank, April 2023) 2 <https://thedocs.worldbank.org/en/doc/7277e925bdaa64d6355c42c897721299-0050062023/original/WDR-Colombia-Case-Study-FORMATTED.pdf>.

²⁴UNHCR, *Global Trends: Forced Displacement in 2024* (12 June 2025) 39 <https://www.unhcr.org/refugee-statistics> accessed 25 July 2025.

seeking refuge included geographic proximity, a shared language (Spanish), and the presence of an already existing network of compatriots.²⁵ These conditions made Colombia a more attractive destination than other American countries such as Brazil, where Portuguese is spoken, or the United States, which requires a much longer and often dangerous journey, including routes like the Darién jungle. Colombia's geographic position illustrates why the country was, and still is, the most accessible, affordable, and culturally familiar option for many Venezuelans.

²⁵ Pirovino and Papyrakis (n 1) 16.

III. Human Rights Framework for Migration Law in Colombia

The InterAmerican Court of Human Rights (IACtHR) has stated that migrants are generally in vulnerable situations when it comes to the protection of their human rights due to imbalances in power between them and nationals or residents, the difference in supplies of public services, cultural prejudice, xenophobia and racism.²⁶

Migrants are widely accepted as a vulnerable group whose human rights ought to be protected, not only by the State in which they find refuge, but also internationally. This is especially reflected by the New York Declaration for Refugees and Migrants of 2016, which acknowledges that migrants are in vulnerable situations and require protection to ensure the fulfilment of their human rights.²⁷

Thus, the human rights framework applicable for migrants, including migrants in Colombia, is not specific to being a migrant. Migrant rights are human rights, and they are governed by the same principles of human rights, such as universality and equality.²⁸ All fundamental rights can be affected during the migration process. Additionally, typically vulnerable groups, such as women and children, may become even more vulnerable during migration.²⁹ Therefore, the full body of international, regional, and national human rights law is relevant to the Venezuelan population in Colombia.

1. International Framework

The two core international human rights treaties, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were both signed and ratified by Colombia in 1969.³⁰ As previously noted,

²⁶ *Advisory Opinion OC-18/03, Juridical Condition and Rights of Undocumented Migrants* (InterAmerican Court of Human Rights, 17 September 2003) paras 112–114 https://www.corteidh.or.cr/docs/opiniones/seriea_18_ing.pdf.

²⁷ United Nations High Commissioner for Refugees (UNHCR), ‘*Migrants in vulnerable situations*’ UNHCR’s perspective (June 2017) 1 <https://www.refworld.org/policy/legalguidance/unhcr/2017/en/117621>.

²⁸ Martin Ruhs, *Migrant Rights, Immigration Policy and Human Development* (Human Development Research Paper No 23/2009, HDRP Series, United Nations Development Programme 2009) 3 (MPRA Paper No 19206) https://mpra.ub.uni-muenchen.de/19206/1/MPRA_paper_19206.pdf

²⁹ Juan Manuel Amaya-Castro, Carolina Moreno, and Gracy Pelacani, *Informe No. 1–2019* (Centro de Estudios en Migración (CEM), July 2019) 18 <https://derecho.uniandes.edu.co/sites/default/files/Informe-cem.pdf>.

³⁰ United Nations Office of the High Commissioner for Human Rights (OHCHR), ‘UN Treaty Body Database: Colombia’ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=37&Lang=EN accessed 5 August 2025.

all rights contained in these treaties may be affected during the migration process, and all states are required to guarantee these rights to everyone within their territory, regardless of whether they are citizens or aliens.³¹ However, since the most common human rights violations against migrants can include *a denial of civil and political rights such as arbitrary detention, torture, or a lack of due process, as well as economic, social and cultural rights such as the rights to health, housing or education*,³² these two treaties form the foundation of the legal protection of migrant's rights.

Colombia has also ratified several international treaties that, although not specific to migrants, are designed to protect vulnerable groups who are often disproportionately affected during migration. These include:

- Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), ratified in 1987
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified in 1982
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD), ratified in 1981
- Convention on the Rights of the Child (CRC), ratified in 1991
- Convention on the Rights of Persons with Disabilities (CRPD), ratified in 2011.³³

Aimed to the specific protection of migrants, Colombia also ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) in 1995,³⁴ along with 8 out of the 10 International Labor Law Conventions,³⁵ and the 1961 Convention on the Reduction of Statelessness in 2014.³⁶ The CMW is the only international treaty explicitly dedicated to migrant rights. It brings together all the rights found in general treaties that also protect migrants, while also extending and granting additional rights

³¹ United Nations Human Rights Committee, 'CCPR General Comment No. 15: The Position of Aliens under the Covenant' (11 April 1986) paras 1–2 <https://www.refworld.org/legal/general/hrc/1986/en/38724>.

³² United Nations Office of the High Commissioner for Human Rights (OHCHR), 'About Migration and Human Rights' <https://www.ohchr.org/en/migration/about-migration-and-human-rights>.

³³ UN OHCHR (n 30); Ruhs (n 28) 4.

³⁴ UN OHCHR (n 30).

³⁵ International Labour Organization (ILO), 'NORMLEX: Colombia Country Profile' (ILO NORMLEX) https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102595 accessed 7 August 2025.

³⁶ Convention on the Reduction of Statelessness (adopted 30 August 1961, entered into force 13 December 1975) 989 UNTS 175.

to migrant workers and their families.³⁷ However, this treaty has not been ratified by major international actors, or *employment* countries, limiting its legal authority on the international level.³⁸ Nevertheless, Colombia, along with almost all of the South American countries excluding Brazil, has ratified it, making it legally binding within country.³⁹

Lastly, Colombia ratified the Convention Relating to the Status of Refugees, also known as the Geneva Convention of 28 July 1951 in 1961.⁴⁰ However, the status of a refugee under international law is a distinct legal category, which doesn't cover all migrants and isn't subject of this work. Therefore, this treaty will not be included in the human rights framework considered here.

In addition to the binding treaties already examined, a number of non-binding but authoritative instruments complement the protection of migrants' rights at the universal level, which Colombia also has to take into account in its migration policies. As soft law instruments, they do not create legal obligations per se, but still have legal relevance, as they produce certain legal effects at the international level, such as shaping the interpretation of the above-mentioned binding norms, or guiding the practice of monitoring bodies, international courts and states.⁴¹

The key international soft-law instrument on international migration is the Global Compact for Safe, Orderly and Regular Migration (GCM), adopted by the United Nations General Assembly in December 2018,⁴² which Colombia, as part of the United Nations, has to consider in its migration policies. The GCM explicitly reaffirms that migrants are entitled to the full enjoyment of human rights regardless of status,⁴³ and it is designed to create a global governance of international migration, guided by several principles, including the rule of law and due process,

³⁷ Stefanie Grant and Harrison Grant Solicitors, *International Migration and Human Rights* (Global Commission on International Migration, September 2005) 19–20 <https://www.iom.int/sites/g/files/tmzbd12616/files/2018-07/TP7.pdf>.

³⁸ *Ibid* 20.

³⁹ International Organization for Migration (IOM) and Institute of Public Policies on Human Rights of MERCOSUR (IPPDH), *Derechos humanos de personas migrantes: Manual Regional* (IOM and IPPDH 2017) 27 <https://publications.iom.int/es/books/derechos-humanos-de-personas-migrantes-manual-regional>.

⁴⁰ United Nations High Commissioner for Refugees (UNHCR), 'States Parties, including Reservations and Declarations, to the 1951 Refugee Convention' <https://www.unhcr.org/media/states-parties-including-reservations-and-declarations-1951-refugee-convention>.

⁴¹ D Thürer, 'Soft Law' in *Max Planck Encyclopedia of Public International Law* (online edn, Oxford University Press) <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1469>.

⁴² <https://docs.un.org/en/A/RES/73/195>

⁴³ Global Compact for Safe, Orderly and Regular Migration (adopted 10 December 2018, UNGA Res 73/195) para 2 <https://docs.un.org/en/A/RES/73/195>.

human rights, gender-responsive and child-sensitive approaches.⁴⁴ It promotes, as its name suggests, safe, orderly and regular migration, and addresses all the challenges faced by persons and governments in situations of large-scale migration, providing 23 objectives for migration governance. Some objectives are particularly relevant to the Colombian context, such as ensuring proof of legal identity and adequate documentation, facilitating access to basic services, and strengthening fair recruitment and decent work for migrants.

Closely related, but also beyond the scope of this work, is the Global Compact on Refugees (GCR), also adopted in 2018 by the United Nations, which seeks to improve international responses to refugee situations.⁴⁵

Other relevant sources include resolutions of the Human Rights Council (HRC) and reports of Special Rapporteurs on the human rights for migrants, which, although also non-binding, reflect the expectations and general duties of the states according to the international community. For example, HRC Resolution 35/17, titled *Protection of the human rights of migrants: the global compact for safe, orderly and regular migration*, reaffirms the need to protect and respect the human rights and fundamental freedoms of all migrants, regardless of their migration status, and the duty of states to comply with their obligations rights under relevant international human rights law.⁴⁶ Similarly, the Special Rapporteur on the human rights of migrants issued a report on *good practices and initiatives on gender-responsive migration legislation and policies*, as well as other thematic reports which provide authoritative guidance for interpreting universal human rights treaties in the migration context and with regard to the specific topic, such as gender-equality.⁴⁷

Finally, the General Comments and General Recommendations of the treaty bodies play an important role in clarifying States' duties towards migrants. The Human Rights Committee, in its General Comment No. 15, affirmed that the general rule is that every right under the ICCPR must be guaranteed without any discrimination between citizens and aliens, regardless of

⁴⁴ *Ibid* para 15.

⁴⁵ United Nations High Commissioner for Refugees (UNHCR), *Global Compact on Refugees* (UNHCR, 2018) <https://www.unhcr.org/sites/default/files/legacy-pdf/5c658aed4.pdf>

⁴⁶ United Nations Human Rights Council, *Resolution 35/17: Protection of the human rights of migrants: the global compact for safe, orderly and regular migration* (22 June 2017) UN Doc A/HRC/RES/35/17, paras 1 and 10 <https://documents.un.org/doc/undoc/gen/g17/183/89/pdf/g1718389.pdf>.

⁴⁷ United Nations Secretary-General, *Human Rights of Migrants: Good Practices and Initiatives on Gender-Responsive Migration Legislation and Policies* (18 July 2019) UN Doc A/74/191 <https://docs.un.org/en/A/74/191>.

migratory status.⁴⁸ The Committee on Economic, Social and Cultural Rights, in General Comment No. 20, highlighted that nationality and legal status or documentation are prohibited grounds of discrimination under the ICESCR.⁴⁹ These interpretive instruments, though not binding, guide the States through their obligations under the ICCPR and ICESCR, and carry legal weight when determining a country's compliance with its international human rights obligations. Accordingly, Colombia has to follow these recommendations, as well as the other soft-law instruments mentioned, within its migration policies and in the treatment of Venezuelan nationals in its territory.

2. Regional Framework

The main human rights document in America, the American Convention on Human Rights (ACHR), was ratified by Colombia in 1973,⁵⁰ and its additional Protocol in the Area of Economic, Social and Cultural Rights in 1997.⁵¹ As part of the Organization of the American States (OAS), Colombia recognized in 1985 the competence of the InterAmerican Commission on Human Rights (IACHR) for an indefinite period, merely with the reservation that this recognition can be withdrawn.⁵²

Not directly part of the OAS, but intertwined with the Commission's work on human rights, the IACtHR acts as the judiciary body for the interpretation of the ACHR. Colombia also ratified its statute with the same document that recognized the competence of the IACHR in 1985.⁵³ Unlike the international level, the decisions of the IACtHR are binding for all countries under its jurisdiction pursuant Art. 68.1 ACHR. Therefore, Colombia is obliged to follow the Court's jurisprudence, also relating to migrants' rights.

⁴⁸ Human Rights Committee (n 31) para 2.

⁴⁹ United Nations Committee on Economic, Social and Cultural Rights, 'General Comment No 20: Non-discrimination in Economic, Social and Cultural Rights (art 2, para 2 of the International Covenant on Economic, Social and Cultural Rights)' (2 July 2009) UN Doc E/C.12/GC/20, para 30 <https://www.refworld.org/legal/general/cescr/2009/en/68520>.

⁵⁰ Organization of American States (OAS), 'Signatories and Ratifications: American Convention on Human Rights (Pact of San José, Costa Rica)' https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm accessed 3 August 2025.

⁵¹ Organization of American States (OAS), 'Signatories and Ratifications: Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights ("Protocol of San Salvador") (A-52)' <https://www.oas.org/juridico/english/sigs/a-52.html> accessed 3 August 2025.

⁵² OAS (n 50) (section on Colombia).

⁵³ *Ibid.*

Additionally, Colombia has ratified regional human rights treaties which, as with the other conventions mentioned before, do not directly mention migrant's rights, but must be taken into consideration when discussing the fundamental rights of migrants. These include the following:

- InterAmerican Convention on the Prevention, Punishment and Eradication of Violence against Women, ratified in 1996.⁵⁴
- InterAmerican Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, ratified in 2003.⁵⁵
- InterAmerican Convention on the Protection of the Human Rights of Older Persons, accessed in 2022.⁵⁶

Lastly, similar to the universal legal framework, Colombia adopted the 1984 Cartagena Convention on the Rights of Refugees. This convention extends the definition of a refugee found in the Geneva Convention of 1951 and provides the countries guidance for a human rights approach towards the rights of refugees.⁵⁷ Since the topic of this work is Venezuelan migrants in general and not only those who fall under the refugee definition, this convention will not be taken into consideration within the international treaties that Colombia is bound to.

Furthermore, the IACHR approved in 2019 the InterAmerican Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking, which Colombia, as part of the OAS, must take into account when carrying it out its migration policies. In these principles, other regional treaties which Colombia has signed but not yet ratified, are being recognized as their basis, and are also relevant for migration law.⁵⁸ These treaties include:

⁵⁴ Organization of American States (OAS), 'Signatories and Ratifications: InterAmerican Convention on the Prevention, Punishment and Eradication of Violence Against Women ("Convention of Belém do Pará")' <https://www.oas.org/juridico/english/sigs/a-61.html> accessed 4 August 2025.

⁵⁵ Organization of American States (OAS), 'Signatories and Ratifications: Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities' <https://www.oas.org/juridico/english/sigs/a-65.html> accessed 4 August 2025.

⁵⁶ Organization of American States (OAS), 'Signatories and Ratifications: Inter-American Convention on Protecting the Human Rights of Older Persons (A-70)' https://www.oas.org/en/sla/dil/inter_american_treaties_A-70_human_rights_older_persons_signatories.asp accessed 4 August 2025.

⁵⁷ IOM and IPPDH (n 39) 29.

⁵⁸ InterAmerican Commission on Human Rights (IACHR), InterAmerican Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Human Trafficking IACHR Resolution 04/19 (7 December 2019) <https://www.refworld.org/legal/legalguidance/iachr/2019/en/149619>.

- InterAmerican Convention against All Forms of Discrimination and Intolerance, signed in 2014.⁵⁹
- InterAmerican Convention against Racism, Racial Discrimination and Related Forms of Intolerance, signed in 2014.⁶⁰

Among the 80 principles set out in the Resolution of the IACHR, one of the most relevant regulations, which guides all of the other principles, is the equality before the law of all persons, including (irregular) migrants, and the entitlement to equal protection without discrimination of any kind, according to Principle 12. These principles also highlight the need of a gender perspective and a differentiated approach within migration laws, the importance of specific protection for children and adolescents in connection with migration in Principles 10 and 11, and the rights to an adequate standard of living in Section IX, which include the rights to property, health, work, education, housing, and culture. The right to access to justice for the protection of all their rights, and the right to an effective remedy for migrants, is also mentioned in Principle 40.⁶¹

In addition, by ratifying the ACHR and the Statute of the IACtHR, Colombia placed itself under the jurisdiction of this Court. Accordingly, Colombia is bound to the jurisprudence and enforcement mechanisms of the Court pursuant Art. 68.1 ACHR. Moreover, the decisions of the IACtHR are final and not subject to appeal according to Art. 67 ACHR, which means that it has the last word on all questions regarding the protection of human rights in the countries bound to its jurisdiction, including migrant's rights.

In the landmark judgement on migrant's rights of the IACtHR, Advisory Opinion OC-18/03, titled *Juridical Condition and Rights of Undocumented Migrants*, the court affirmed that human rights apply to all individuals equally, regardless of their nationality or migratory status, given that the principle of equality before the law and non-discrimination belongs to *jus cogens* and has *erga omnes* character.⁶² As a result, the IACtHR imposed obligations on all states under its jurisdiction to respect and ensure that also migrants fully enjoy their fundamental rights in any

⁵⁹ Organization of American States (OAS), 'Signatories and Ratifications: InterAmerican Convention Against All Forms of Discrimination and Intolerance (A-69)' https://www.oas.org/en/sla/dil/inter_american_treaties_a-69_discrimination_intolerance_signatories.asp accessed 5 August 2025.

⁶⁰ Organization of American States (OAS), 'Signatories and Ratifications: InterAmerican Convention Against Racism, Racial Discrimination, and Related Forms of Intolerance (A-68)' https://www.oas.org/en/sla/dil/inter_american_treaties_A-68_racism_signatories.asp accessed 5 August 2025.

⁶¹ IACHR (n 58).

⁶² IACtHR, *OC-18/03* (n 26) paras 98, 101, 106, 109.

country, even when undocumented. A breach of this obligation constitutes a breach of peremptory norms of international human rights law, according to the IACtHR.⁶³

This judgment means that Colombia may not discriminate or tolerate situations that harm migrants through migration legislation or any other acts of the state.⁶⁴ For the present work, it means that Colombia can distinguish between its nationals and Venezuelans, but those distinctions must be reasonable, objective, proportionate and they may not harm the fundamentals rights of the Venezuelan population, especially their right to equality before the law.⁶⁵

Specifically, about children's rights, the Court ruled in Advisory Opinion *Rights and guarantees of children in the context of migration and/ or in need of international protection* that states have to prioritize a human rights-based approach while designing, adopting and implementing their migration policies regarding children.⁶⁶ The protection of children and their development should be put first and foremost, regardless of their nationality, migratory status, or the ones of their parents.⁶⁷ This decision showcases the application of the above mentioned judgement in the specific context of a vulnerable group within migrants, children.

In other judgments of the IACtHR, the Court has also followed a human rights-based approach to migration, such as in the case of *Vélez Loor v. Panama*, where the court ruled that Panama had to reform its legislation regarding the arbitrary detention of migrants to guarantee judicial oversight, due process rights, non-discrimination and humane treatment.⁶⁸ In the case of *Expelled Dominicans and Haitians v. Dominican Republic*, the Court ruled that these guarantees, referring specifically to domestic remedies against human rights violations (in that case: the expulsion of immigrants from the territory of the Dominican Republic), not only have to exist in positive law, but also have to be effective in order to fulfill the obligations under Art.

⁶³ *Ibid* para 106.

⁶⁴ *Ibid* para 119.

⁶⁵ *Ibid*.

⁶⁶ *Advisory Opinion OC-21/14: Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection* (InterAmerican Court of Human Rights, 19 August 2014) para 69 https://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf.

⁶⁷ *Ibid*.

⁶⁸ *Case of Vélez Loor v Panama* - Preliminary Objections, Merits, Reparations, and Costs (InterAmerican Court of Human Rights, 23 November 2010) https://www.corteidh.or.cr/docs/casos/articulos/seriec_218_ing.pdf.

2 ACHR.⁶⁹ According to this provision, States are obliged to adapt their domestic law to the standards of the ACHR.

This jurisdiction regarding human rights, specifically the human rights-based approach towards migrant's rights, must be applied in Colombia through legislation and jurisprudence of the national courts. Judge Diego García-Sayán clearly illustrates in his concurring opinion in the Case of *Manuel Cepeda Vargas v. Colombia* the importance of domestic courts using the Court's jurisprudential criteria to ensure the harmonization of human rights jurisprudence across the American continent.⁷⁰ Following the subsidiarity principle of international human rights law, the primary duty bearer for the protection of Venezuelans' human rights in Colombia is the Colombian state. The government and the courts must ensure these rights according to the ACHR and the IACtHR's human rights-based approach to migration.

3. National Framework

With regards to the Colombian legal framework for migrants' rights, the Colombian system acknowledges its main responsibility for the fulfilment of human rights within its territory, while also recognizing all the previously mentioned ratified treaties and binding jurisprudence as norms with higher rank than domestic legislation in accordance with Art. 93 of its 1991 Political Constitution.⁷¹ Accordingly, all international (and regional) treaties that establish any form of fundamental rights protection, are part of the Colombian *bloque de constitucionalidad* (constitutional block), and therefore prevail over any other domestic norm that lacks constitutional status.⁷² The constitutional block is defined as norms and principles that, while not explicitly stated in the Colombian Constitution, are used as constitutional parameters for

⁶⁹ *Case of Expelled Dominicans and Haitians v Dominican Republic* - Preliminary Objections, Merits, Reparations and Costs (InterAmerican Court of Human Rights, 28 August 2014) para 379 https://www.corteidh.or.cr/docs/casos/articulos/seriec_282_ing.pdf; see also *Case of Nadege Dorzema et al. v Dominican Republic* - Merits, Reparations and Costs (InterAmerican Court of Human Rights, 24 October 2012) para 216 https://www.corteidh.or.cr/docs/casos/articulos/seriec_251_ing.pdf; and *Case of Garrido and Baigorria v Argentina* - Reparations and Costs (InterAmerican Court of Human Rights, 27 August 1998) para 130 https://www.corteidh.or.cr/docs/casos/articulos/seriec_39_ing.pdf; mentioning the *effet utile* principle.

⁷⁰ *Case of Cepeda Vargas v Colombia* - Preliminary Objections, Merits, Reparations and Costs (InterAmerican Court of Human Rights, 26 May 2010) concurring opinion of Judge García Sayán, para 12 https://www.corteidh.or.cr/docs/casos/articulos/seriec_213_ing.pdf.

⁷¹ Constitución Política de Colombia, art 93 (Political Constitution of Colombia) <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=4125>.

⁷² Corte Constitucional (Colombia), *Derechos de las personas en situación de migración irregular* (2020) 46; Fundación Panamericana para el Desarrollo (FUPAD), *El acceso a los derechos de los migrantes en Colombia: cartilla práctica e informativa* [n.d.] 49 https://www.oas.org/es/sadye/documentos/FUPAD_CartillaDerechos.pdf.

judicial review because they are considered part of the Constitution under Art. 93.⁷³ The constitutional rank of international human rights treaties means for Colombia that all the three branches of public power are bound by them: legislation must comply with the treaties and jurisprudence mentioned above, the government must act in accordance with them, and, most importantly, domestic courts are guided by these human rights standards and ought to apply a human rights-based approach in migration-related matters.

Furthermore, all of the fundamental rights set out in the treaties mentioned above are part of the text of the Colombian constitution. In Art. 13, the equality of all peoples before the law is recognized, stating that all persons shall receive equal protection and treatment from governmental authorities, and explicitly prohibiting discrimination, including on the grounds of nationality.⁷⁴ Accordingly, the Colombian state must adopt specific measures to protect vulnerable persons and ensure their equal conditions for all members of the population.⁷⁵

Among a wide range of other fundamental rights granted to residents of the country, the Colombian Constitution states that aliens in Colombia enjoy the same civil rights and guarantees as Colombian nationals, excluding only political rights and those that may be limited for reasons related to public order.⁷⁶ Notably, Art. 48 guarantees all inhabitants of the territory the irrevocable right to social security, including migrants.⁷⁷ However, migrants in Colombia not only enjoy the same rights, but also the same duties as Colombian nationals.⁷⁸

In line with national and international positive law, the Colombian Constitutional Court has issued a broad range of decisions concerning the rights of migrants in Colombia, recognizing clear state obligations relating to the rights to equality, education, health, social security, work, due process, judicial remedies, and even nationality for the children of migrants—regardless of their migratory status.⁷⁹ According to the Court, the subjects to whom the state owes protection do not earn that protection through political connection to the state (i.e., Colombian nationality),

⁷³ Corte Constitucional (n 72) 4.

⁷⁴ Constitución Política de Colombia (n 71) art 13.

⁷⁵ Amaya-Castro, Moreno and Pelacani (n 29) 20.

⁷⁶ Constitución Política de Colombia (n 62) art 100.

⁷⁷ Constitución Política de Colombia (n 62) art 48

⁷⁸ Constitución Política de Colombia (n 62) art 4.

⁷⁹ Sentencia T-172/93, Sentencia T-380/98, Sentencia C-1259/01, Sentencia C-339/02, Sentencia C-395/02, Sentencia T-680/02, Sentencia C-523/03, Sentencia C-913/03, Sentencia C-1058/03, Sentencia C-070/04 and Sentencia C-238/06 (Corte Constitucional de Colombia), as cited in Sentencia C-834/07 (Corte Constitucional de Colombia, 10 October 2007) <https://www.corteconstitucional.gov.co/relatoria/2007/c-834-07.htm>.

but through the mere fact of being person.⁸⁰ The Court has affirmed that the full scope of rights guaranteed by the Colombian Constitution and international treaties must not be denied by any state authority, even in the case of migrants with irregular status.⁸¹

In its jurisprudence relating to Arts. 13 and 100 of the Colombian Constitution, the Court developed the following criteria as a form of jurisdictional guidelines to determine in a unified way whether unequal treatment of migrants can be justified under constitutional law:

1. The regulated object must allow for such distinctions,
2. The type of right involved must be examined,
3. The measure must be of an objective and reasonable character,
4. No fundamental rights may be affected,
5. No international laws may be violated, and
6. The particularities of each concrete case must be examined.⁸²

These criteria must be applied when assessing migrants' right to equality before the law, as established in C-768/98 and subsequently reaffirmed in later judgments.⁸³ These guidelines apply to all fundamental rights of migrants, not only when assessing a violation of Art. 13 alone.

Additionally, the Court has dealt with the Venezuelan displacement wave in several of its decisions. In the first case concerning a Venezuelan migrant displaced in the context analyzed by this paper, SU 677/17, the Court examined the status of the Venezuelan population in Colombia since 2015, the measures taken by the Colombian government in this regard and reaffirmed that the Colombian state must provide basic services, including emergency care, regardless of the person's irregular migratory status, especially taking into account the Colombian humanitarian crisis resulting from the massive migration wave from Venezuela.⁸⁴

⁸⁰ Sentencia T-172/93 (Corte Constitucional de Colombia, 26 April 1993) <https://www.corteconstitucional.gov.co/relatoria/1993/t-172-93.htm>; as also cited in Sentencia C-288/09 (Corte Constitucional de Colombia, 2009) <https://www.corteconstitucional.gov.co/relatoria/2009/c-288-09.htm> and Sentencia T-218/18 (Corte Constitucional de Colombia, 5 June 2018) <https://www.corteconstitucional.gov.co/relatoria/2018/t-218-18.htm>.

⁸¹ Sentencia T-215/96 (Corte Constitucional de Colombia, 24 May 1996) <https://www.corteconstitucional.gov.co/relatoria/1996/t-215-96.htm>.

⁸² Corte Constitucional (n 72) 18.

⁸³ Such as Sentencia C-288/09 (Corte Constitucional de Colombia, 29 April 2009) <https://www.corteconstitucional.gov.co/relatoria/2009/c-288-09.htm>; and Sentencia C-1259/01 (Corte Constitucional de Colombia, 27 November 2001) <https://www.corteconstitucional.gov.co/relatoria/2001/c-1259-01.htm>.

⁸⁴ Sentencia SU-677/17 (Corte Constitucional de Colombia, 28 November 2017) para 56 <https://www.corteconstitucional.gov.co/relatoria/2017/su677-17.htm>.

In that case, the Court found that a hospital had violated the fundamental rights of a pregnant woman and her newborn by refusing to provide free medical care during her pregnancy and at the time of delivery. The Court further emphasized that children, particularly Venezuelan children, are subjects that require special protection from the state, also due to the status of their parents as (irregular) migrants and conditions of extreme poverty.⁸⁵

The Court even ruled that *Migración Colombia* (the entity responsible for issuing migratory documents, including those under the special regime applicable to Venezuelans)⁸⁶ violated the rights to equality before the law and to a life free of violence, particularly in relation to the right to health, a minimum standard of living, and work of a Venezuelan national in the case T-166/24.⁸⁷ The Court held that all governmental decisions, including those concerning migrants, must adopt a gender-sensitive approach and provide special protection to migrant women (or other vulnerable groups), even when such protection is not explicitly provided for in the applicable legal framework.⁸⁸ Accordingly, the strict application of the legal regime for Venezuelans is unconstitutional, even if the law doesn't foresee exceptions in cases of *force majeure*. In all cases, constitutional law, the fundamental rights of all individuals, and the structural vulnerabilities faced by migrants, who typically experience *force majeure* circumstances, must be considered when applying any legal provision.⁸⁹

In conclusion, the Colombian Constitutional Court has developed an extensive jurisprudence regarding the rights of migrants, specifically Venezuelan migrants, consolidating a line of protection that reflects and, in many respects, aligns with regional and international human rights standards. Beyond the landmark decisions already mentioned, the Court has addressed issues ranging from access to health care and social services, to due process in expulsion proceedings, to nationality and regularization measures for children and adults. The Court's jurisprudence serves as an important complement to Colombia's constitutional law, while also showing compliance with the Inter-American Court of Human Rights' human rights-based approach to migration mentioned above.

⁸⁵ *Ibid* para 66.

⁸⁶ In English: The Special Administrative Unit for Migration Colombia (Unidad Administrativa Especial Migración Colombia).

⁸⁷ Sentencia T-166/24 (Corte Constitucional de Colombia, 26 April 2024)
<https://www.corteconstitucional.gov.co/relatoria/2024/t-166-24.htm>.

⁸⁸ *Ibid* para 66.

⁸⁹ *Ibid* Síntesis del caso and para 80.

IV. Colombian Legal Framework for Migration Law

As explained in the previous chapter, the Colombian legal framework on migration begins with the 1991 Constitution, particularly Arts. 13, 93 and 100.⁹⁰ Together, these provisions form the constitutional basis for the protection of migrants. This chapter now turns to domestic migration law, which must be based on the previously discussed provisions. It describes the specific statutory instruments and administrative structures that regulate migration in Colombia. It also outlines the measures specifically adopted in response to the arrival of Venezuelan nationals after the displacement wave that started in 2015, tracing their evolution from initial short-term mechanisms to the current ETPV.

1. General Framework

At the statutory level, the central instrument for migration law in Colombia is Law 2136 of 2021, which created the *Política Integral Migratoria* (PIM). The PIM sets the objectives, principles and institutional framework of Colombia's migration policy, which include promoting safe and regular migration, fostering socio-economic integration, preventing discrimination, and ensuring respect for human dignity.⁹¹ It also establishes guiding principles such as equality, proportionality, due process, non-refoulement and a differentiated approach for vulnerable groups, including children, women and persons with disabilities.⁹²

To implement these principles, the above-mentioned law strengthened the *Sistema Nacional de Migraciones* (SNM), coordinated by the Ministry of Foreign Affairs. The SNM brings together national and local authorities, oversight institutions and civil society actors.⁹³ It is tasked with designing, monitoring and evaluating migration policy and issuing recommendations to the Colombian government to improve migrants' quality of life.⁹⁴

In parallel, the entry, stay and exit of foreigners is regulated by a set of decrees issued by the Ministry of Foreign Affairs, and administrative resolutions issued by *Migración Colombia*. *Migración Colombia* is the Special Administrative Unit for Migration under the Ministry of

⁹⁰ Constitución Política de Colombia (n 62) arts 13, 93, 100.

⁹¹ Colombia, Ley 2136 de 2021, 'Por medio de la cual se establece la Política Integral Migratoria y se dictan otras disposiciones' (2 August 2021) arts 1-2
<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=168067>.

⁹² *Ibid* art 4.

⁹³ *Ibid* arts 22-26.

⁹⁴ *Ibid* arts 24-25.

Foreign Affairs, created by Decree 4062 of 2011. It acts as the main entity responsible for fulfilling migration-related mandates, such as issuing migration documents, imposing migratory sanctions, and registering the entry or exit of inhabitants of Colombia.⁹⁵

The key regulatory instrument is Resolution 5477 of 2022, which establishes the current visa regime.⁹⁶ This resolution consolidated and simplified the Colombian visa system into three main categories: visitor visas (V), migrant visas (M), and permanent resident visas (R).⁹⁷ Applications generally require a valid passport, proof of the intended activity, and, in some cases, additional documentation such as letters of invitation, work contracts or proof of financial means.⁹⁸

Visitor visas (V) are intended for foreigners entering Colombia for short periods and for purposes such as tourism, business, academic exchange, medical treatment, artistic presentations, or short-term work assignments. They are generally valid for up to two years and are non-renewable beyond their specific purpose.⁹⁹

Migrant visas (M) are designed for foreigners who intend to live in Colombia for a longer period but who have not yet met the requirements for permanent residence (R). There are several subcategories of M visas, including those for work, marriage or permanent partnership with a Colombian national, study, religious service, being the parent of a Colombian national, or being recognized as a refugee.¹⁰⁰ They are usually valid for up to three years and may be renewed.¹⁰¹ Holders of M visas enjoy the right to live and, in most cases, work in Colombia during the validity of the visa,¹⁰² and time spent under this category counts towards eligibility for a resident visa. The type of work permit is linked to the category of M visa for which the migrant qualifies. Work permits may range from open ones, with which the migrant can work anywhere in the

⁹⁵ Colombia, El Presidente de la República de Colombia, Decreto 4062 de 2011, 'Por el cual se crea la Unidad Administrativa Especial Migración Colombia' (31 October 2011)

<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=44541>; Migración Colombia, Official website, <https://www.migracioncolombia.gov.co> accessed 26 August 2025.

⁹⁶ Colombia, Ministerio de Relaciones Exteriores, Resolución 5477 de 2022, 'Por la cual se regula la expedición de visas' (22 July 2022)

https://www.cancilleria.gov.co/sites/default/files/Normograma/docs/resolucion_minrelaciones_5477_2022.htm

⁹⁷ *Ibid* art 22.

⁹⁸ *Ibid* arts 24 and 25.

⁹⁹ *Ibid* arts 29-32.

¹⁰⁰ *Ibid* arts 67-79.

¹⁰¹ *Ibid* art 64.

¹⁰² *Ibid* art 66.

country, to employer-specific or role-specific, to non-work-authorized, as is the case for retirement or student visas.¹⁰³

Resident visas (R) grant permanent residence to foreigners who want to establish their lives permanently in Colombia.¹⁰⁴ Eligibility includes those who have held a migrant visa (M) continuously for a certain period, depending on the M visa type, Colombians who gave up their Colombian nationality in the past, former members of the FARC-EP who are covered under the peace agreement¹⁰⁵ and, most relevant for this thesis, Venezuelans who have held the *Permiso Especial de Permanencia* (PEP)¹⁰⁶ or the PPT under the ETPV for five years.¹⁰⁷ Resident visas are indefinite but require holders to maintain residence in Colombia and to renew their visa stamp every five years.⁹ For Venezuelan nationals, applications only began on the 1st of June 2023.¹⁰⁸ Holders of a resident visa, have an open work permit, which allows them to undertake any kind of job permitted under Colombian law.¹⁰⁹

Law 2136 of 2021 and Resolution 5477 of 2022 therefore form the backbone of Colombia's general migration framework, within which special instruments like the ETPV have been created in response to the Venezuelan displacement wave. A key goal of the migratory regulations for Venezuelans has been not only to allow Venezuelans citizens to regularize their migratory status through the ETPV but also to enable them to access the ordinary migration regime and ultimately acquire resident visas.¹¹⁰

2. Historical Overview of Measures Regarding Venezuelan Migrants

Colombia first responded to the arrival of Venezuelan nationals with already existing migratory measures, while gradually also implementing more short-term measures specific to Venezuelan

¹⁰³ Fundación Panamericana para el Desarrollo (FUPAD) (n 72) 35-36.

¹⁰⁴ Resolución 5477 de 2022 (n 96) art 85.

¹⁰⁵ Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y *Duradera* (Final Agreement for the Termination of the Conflict and the Building of a Lasting and Stable Peace, 24 November 2016) https://www.cancilleria.gov.co/sites/default/files/Fotos2016/12.11_1.2016nuevoacuerdofinal.pdf

¹⁰⁶ In English: Special Permanency Permit

¹⁰⁷ Resolución 5477 de 2022 (n 96) arts 90-92.

¹⁰⁸ *Ibid* art 91 para 2.

¹⁰⁹ *Ibid* art 87.

¹¹⁰ Equilibrium Social Development Consulting (SDC), Konrad Adenauer Stiftung (KAS), Fundación Ideas para la Paz (FIP), Organización Internacional para las Migraciones (OIM) and Centro de Atención y Valoración de Estudios en Extranjería (CAVEX), *Estudio de Impacto fiscal de la migración venezolana en Colombia: realidad vs. potencial* (Estudio de Impacto, Colombia, January 2024) 26 https://lac.iom.int/sites/g/files/tmzbd12601/files/documents/2024-07/0403_reporte-colombia-kas-short_vf-002.pdf

migrants. These mechanisms were centered in preventing large numbers of people from remaining in irregular situations, which typically leads to further human rights violations; and also in allowing cross-border mobility for the affected groups.

The first instrument available to Venezuelans was the *Permiso de Ingreso y Permanencia*¹¹¹ (PIP), a general entry permit regulated at that time by the Ministry of Foreign Affairs. The PIP was granted to nationals of countries that do not require a visa for short-term, specific purposes such as tourism, transit, or other temporary activities, for a validity up to 90 days.¹¹² For Venezuelans, it often provided initial legal entry but did not grant access to long-term residence, formal employment, or public services.

In 2017, the Colombian government created the PEP through Resolution 5797 of 2017,¹¹³ as a regularization mechanism for Venezuelans already present in Colombia. The PEP was meant to be issued for a validity of 90 days, with the possibility of renewal for the same period, up to a total of 2 years, within an application window of 90 days following the publication of the resolution.¹¹⁴ Venezuelan nationals who were in Colombian territory by a specific date, had entered Colombia through one of the official Migratory Control Points with a valid passport, had no criminal record, and were not subject to any deportation orders, were eligible to acquire the PEP and with it, they were allowed to take up any occupation.¹¹⁵

The PEP was not only a migratory document recognized by *Migración Colombia*, but was also accepted by other authorities as a valid form of identification. The Ministry of Health accepted it for registration in the Social Protection System,¹¹⁶ the Ministry of Labor issued guidelines to facilitate formal employment,¹¹⁷ and the *Superintendencia Financiera* required financial institutions to also recognize it. As a result, the PEP allowed Venezuelans to live and work

¹¹¹ In English: Entry and Permanency Permit

¹¹² Fundación Panamericana para el Desarrollo (FUPAD) (n 72) 19.

¹¹³ Colombia, Ministerio de Relaciones Exteriores, Resolución 5797 de 2017, 'Por la cual se crea un Permiso Especial de Permanencia' (25 July 2017) https://www.cancilleria.gov.co/sites/default/files/Normograma/docs/resolucion_minrelaciones_5797_2017.htm

¹¹⁴ *Ibid* art 2.

¹¹⁵ *Ibid* arts 1 and 3.

¹¹⁶ Colombia, Ministerio de Salud y Protección Social, Resolución 3015 de 2017, 'Por medio de la cual se incluye el Permiso Especial de Permanencia- PE como documento válido de identificación en los sistemas de información del Sistema de Protección Social' (18 August 2017) https://unidad-administrativa-especial-migracion-colombia.micolombiadigital.gov.co/sites/unidad-administrativa-especial-migracion-colombia/content/files/000028/1354_resolucion_no_03015_de_2017.pdf.

¹¹⁷ Colombia, Ministra del Trabajo, Circular 56 de 2017 'Atención a población venezolana en el marco de los servicios de gestión y colocación que desarrollan los prestadores autorizados del servicio público de empleo' (10 October 2017) <https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Circular/30038013>.

legally, access social and health services, attend education schools or universities, and open bank accounts.

The validity period, maximum stay, and the application deadlines were later extended through several subsequent resolutions.¹¹⁸ The last resolution set the 31st of August 2020 as the last date by which a Venezuelan national had to be present in Colombian territory in order to be eligible for a PEP.¹¹⁹ Additionally, the Venezuelan nationals who were registered in the *Registro Administrativo de Migrantes Venezolanos*¹²⁰ (RAMV), a mass registration to identify and characterize Venezuelan migrants, up to a certain date, as well as Venezuelan nationals who had formerly been members of the Venezuelan army or police forces, were made eligible for the PEP through Resolutions 6370 of 2018 and 1465 of 2019, respectively.¹²¹ Resolution 2278 of 2019 further implemented the *Permiso Especial Complementario de Permanencia*¹²² (PECP), which granted temporary legal status to Venezuelans whose refugee applications had been denied or were still pending.

Also in 2018, the government introduced the *Permiso Especial de Permanencia para el Fomento de la Formalización*¹²³ (PEPFF). This measure targeted Venezuelans who already had a formal labor contract with a Colombian employer.¹²⁴ Its purpose was to promote labor formalization and provide employers with a mechanism to lawfully hire Venezuelan workers.¹²⁵

¹¹⁸ Colombia, Ministerio de Relaciones Exteriores, Resolución 740 de 2018, ‘Por la cual se dictan disposiciones relacionadas con el Permiso Especial de Permanencia (PEP)’ (2018), complemented by Resolución 2033 de 2018; Resolución 3317 de 2018, complemented by Resolución 10677 de 2018; Resolución 1567 de 2019; Resolución 2634 de 2019; Resolución 3870 de 2019; Resolución 240 de 2020, complemented by Resolución 238 de 2020; Resolución 2018 de 2020; Resolución 2502 de 2020, all as listed in Equilibrium Social Development Consulting (SDC) (n 110) 26-27.

¹¹⁹ Colombia, Ministerio de Relaciones Exteriores, Resolución 2502 de 2020, ‘Por la cual se establece un nuevo término para acceder al Permiso Especial de Permanencia (PEP), creado mediante Resolución número 5797 de 2017 del Ministerio de Relaciones Exteriores, y se dictan otras disposiciones sobre la materia’ (23 September 2020)

https://www.cancilleria.gov.co/sites/default/files/Normograma/docs/resolucion_minrelaciones_2502_2020.htm

¹²⁰ In English: Administrative Register of Venezuelan Migrants.

¹²¹ Equilibrium Social Development Consulting (SDC) (n 110) 27-28.

¹²² In English: Special Complementary Permanency Permit.

¹²³ In English: Special Permanency Permit for the Promotion of Formalization.

¹²⁴ Colombia, El Presidente de la República de Colombia, Decreto 117 de 2020, ‘Por el cual se adiciona la Sección 3 al Capítulo 8 del Título 6 de la Parte 2 del Libro 2 del Decreto 1072 de 2015, Decreto Único Reglamentario del Sector Trabajo, en lo relacionado con la creación de un Permiso Especial de Permanencia para el Fomento de la Formalización – PEPFF’ (28 January 2020) <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=105292>.

¹²⁵ Corte Constitucional (n 72) 35.

Another important instrument was the *Tarjeta de Movilidad Fronteriza*¹²⁶ (TMF), introduced to facilitate short-term mobility for Venezuelan residents of border areas.¹²⁷ The TMF allowed entry into Colombia for up to 7 consecutive days for purposes such as purchasing food and basic goods, accessing essential services, visiting schools, universities or relatives (pendular migration).¹²⁸ The TMF was granted for 2 years and was issued until March 2020, with approximately 5.2 million cards issued by that time.¹²⁹

Although there was a progression from short stay permits to regularization mechanisms tailored specifically to Venezuelans, these measures remained transitional. They provided temporary relief and access to services and the job market, but they were not sufficient. By 2020, the continued scale of Venezuelan displacement made it evident that a more comprehensive and long-term approach was required, which would come with the adoption of the ETPV in 2021.

3. Current Regime Applicable to Venezuelan Migrants

In 2021, Colombia adopted the internationally acclaimed Decree 216/2021,¹³⁰ which created the ETPV with the aim of regulating the migratory status of more Venezuelan nationals, since it had become evident that a large part of the Venezuelan population remained undocumented, and that many of the 720,113 Venezuelan nationals who had acquired the PEP by that time, had been unable to transition into the ordinary migratory regime within the given timeframe.¹³¹ The decree was later implemented by Resolution 971 of 2021 issued by *Migración Colombia*, which regulates the administrative procedure of the ETPV.¹³²

The ETPV established a 10-year protection framework with two components: the RUMV and the PPT,¹³³ ranging from immediate regularization to a path to permanent residence or

¹²⁶ In English: Border Mobility Card.

¹²⁷ Colombia, Migración Colombia, Resolución 3167 de 2019, 'Por la cual se establecen los criterios para el ingreso, permanencia y salida de nacionales y extranjeros del territorio colombiano; además, los mecanismos y normas aplicables en el proceso del control migratorio' (25 October 2019) art 19 https://www.cancilleria.gov.co/sites/default/files/Normograma/docs/resolucion_uamc_3167_2019.htm.

¹²⁸ Corte Constitucional (n 72) 33.

¹²⁹ Migration Policy Institute, 'Colombia's Historic Legalization: What Comes Next?' (Migration Policy Institute, 10 March 2021) <https://www.migrationpolicy.org/news/colombia-historic-legalization-what-next>.

¹³⁰ Colombia, El Presidente de la República de Colombia, Decreto 216 de 2021, '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' (1 March 2021) https://www.funcionpublica.gov.co/eva/gestornormativo/norma_pdf.php?i=159606.

¹³¹ *Ibid* considerations 2.

¹³² Colombia, Migración Colombia, Resolución 971 de 2021, 'Por la cual se implementa el Estatuto Temporal de Protección para Migrantes Venezolanos adoptado por medio del Decreto 216 de 2021' (28 April 2021) https://cancilleria.gov.co/normograma/compilacion/docs/resolucion_uamc_0971_2021.htm

¹³³ *Ibid* art 1.

Colombian nationality. Existing PEPs remained valid during the transition, but no new ones were issued.

Registration in the RUMV is mandatory to obtain the PPT,¹³⁴ which is an identity and residence document valid throughout the Colombian territory and recognized by both public and private institutions, with an open work permit.¹³⁵ It therefore allows access to all public services and legal occupations. The RUMV is an online and in-person registration process to provide biometric and socio-economic data and is mandatory for all Venezuelan nationals residing in Colombia.¹³⁶ Registration is free of charge and may be completed with any form of identification, even if expired.

Regarding passport validity, Resolution 872 of 2019 from the Colombian Ministry of Foreign Affairs recognized that most of the Venezuelan population does not have a valid passport nor access to one. For this reason, the resolution regulated entry, stay, and departure from Colombia without a valid passport, allowing expired documents to be used as identification, first for 2 years, and then extended for another 10 years.¹³⁷

Eligibility for the ETPV was defined broadly. Art. 4 of the Decree and Art. 2 of the Resolution list the following groups Venezuelan nationals as eligible:

¹³⁴ *Ibid* art 12 para 1.

¹³⁵ *Ibid* art 11, later confirmed by Colombia, Ministerio de Salud y Protección Social, Resolución 572 de 2022, ‘Por la cual se incluye el Permiso por Protección Temporal — PPT como documento válido de identificación de los migrantes venezolanos en los sistemas de información del Sistema de Protección Social y se definen sus especificaciones’ (8 April 2022)

https://www.minsalud.gov.co/Normatividad_Nuevo/Resolución%20No.%20572%20de%202022.pdf;

Colombia, El Presidente de la República de Colombia, Directiva Presidencial 05 de 2022, ‘Lineamientos sobre el Permiso por Protección Temporal para Migrantes Venezolanos como documento válido para acceder a la oferta institucional y trámites del Estado Colombiano’ (31 May 2022)

<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=187166>; Colombia, Ministerio de Educación Nacional, Resolución 14448 de 2022, ‘Por medio de la cual se incorpora el Permiso por Protección Temporal – PPT como documento de identificación en el trámite de convalidación de títulos de Educación Superior regulado por la resolución 10687 de 2019’ (25 July 2022)

https://www.mineducacion.gov.co/1780/articles-411475_pdf.pdf; Colombia, Ministerio de Transporte, Resolución 20223040044715 de 2022, ‘Por la cual se reglamenta el uso del Permiso por Protección Temporal (PPT) en los trámites de Tránsito y se dictan otras disposiciones’ (2 August 2022)

<https://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=127599>.

¹³⁶ *Ibid* arts 5-8.

¹³⁷ Colombia, Ministerio de Relaciones Exteriores, Resolución 872 de 2019, ‘Por la cual se dictan disposiciones para el ingreso, tránsito y salida del territorio colombiano, para los nacionales venezolanos que porten el pasaporte vencido’ (5 March 2019)

https://www.cancilleria.gov.co/sites/default/files/Normograma/docs/resolucion_minrelaciones_0872_2019.htm; later extended by Colombia, Ministerio de Relaciones Exteriores, Resolución 2231 de 2019, ‘Por la cual se dictan disposiciones para el ingreso, tránsito, permanencia y salida del territorio colombiano, para los nacionales venezolanos que porten el pasaporte vencido, y se deroga la Resolución 872 de 2019’ (9 June 2021) https://www.cancilleria.gov.co/normograma/compilacion/docs/resolucion_minrelaciones_2231_2021.htm.

- Venezuelans in Colombia with a regular migratory status who acquired a PIP, PTP, or PEP in any of its phases, including the PEPFF
- Venezuelans in Colombia with a regular migratory status who acquired a *Salvoconducto* SC-2 (document confirming that they have applied for refugee status)
- Venezuelans in Colombia with an irregular migratory status as of the 31st of January 2021
- Venezuelans who entered the Colombian territory through official Migratory Control Points with regular migratory status within the first 2 years of the Decree.¹³⁸ This timeframe was between the 29th of May 2021 and 28th of May 2023.¹³⁹

Venezuelan nationals who fall under one of these categories, can register in the RUMV if they meet the following additional requirements:

- Be physically present in Colombian territory
- Present a valid or expired identification document such as passports, Venezuelan ID, birth certificates, or PEP
- Explicitly express the intention to reside in Colombia
- Accept the terms and conditions regarding data protection.¹⁴⁰

According to Resolution 971/2021, Venezuelans had to comply with the following timelines for RUMV registration:

- 5th of May 2021 - 28th May 2022: for Venezuelans already residing in Colombia
- 29th of May 2021 - 24th of November 2023: for Venezuelans entering Colombia before the 28th of May 2023.¹⁴¹

To complete the process marked out with the ETPV, Venezuelans who registered in the RUMV can obtain the PPT at the discretion of *Migración Colombia* if they fulfil following further requirements:

- No criminal records, or pending administrative or judicial sanctions in Colombia or abroad
- No ongoing administrative immigration investigations
- No existing expulsion, deportation, or financial penalty orders

¹³⁸ Decreto 216 de 2021 (n 130) art 4; Resolución 971 de 2021 (n 132) art 2.

¹³⁹ Resolución 971 de 2021 (n 132) art 2 para 4.

¹⁴⁰ Decreto 216 de 2021 (n 130) art 8; Resolución 971 de 2021 (n 132) art 5.

¹⁴¹ Resolución 971 de 2021 (n 132) art 4.

- No convictions for intentional crimes (*crímenes dolosos*)
- Not having been granted refugee status or asylum in another country
- No pending international protection applications elsewhere, unless denied.¹⁴²

The PPT is valid until the 30th of May 2031, date on which Decree 216 of 2021 expires, though its renewal remains at the discretion of the Colombian government.¹⁴³ However, the ETPV's main goal is to create a pathway to permanent residence. Under the ordinary migratory regime, Venezuelan nationals may apply for a resident visa (R) after holding either a PEP or PPT for 5 years, or cumulatively both for 5 years.¹⁴⁴

In addition to the general rules, Resolution 971 of 2021 introduced differentiated procedures for groups considered to be in situations of vulnerability. For children and adolescents, the regular provisions apply, but their special situation of vulnerability, especially in the case of unaccompanied minors, has to be taken into account in the application or interpretation of the norms.¹⁴⁵ Arts. 25 to 35 of the mentioned resolution govern the procedures for minors, including the prioritization of certain at-risk groups and describing the steps to take if authorities identify any harmful situations, or threats against minors during the process.¹⁴⁶

The situation of transgender persons, whose self-identified gender does not correspond to the data in their Venezuelan documents, is also addressed. The resolution explicitly allows registration in accordance with gender identity and requires the PPT to be issued reflecting the chosen name and gender marker.¹⁴⁷

In the accompanying considerations, *Migración Colombia* recognizes that the Venezuelan population in, especially the ones who did not enter through the official Migration Control Points, are more susceptible to human rights violations. These risks are particularly serious for children, adolescents, women, elderly and persons with disabilities.¹⁴⁸ Therefore, *Migración Colombia* affirms that the implementation of Decree 216 of 2021 and Resolution 971 of 2021, has to be done in the light of the “principle of equality and no discrimination, attending to the

¹⁴² Decreto 216 de 2021 (n 130) art 12; Resolución 971 de 2021 (n 132) art 15.

¹⁴³ Decreto 216 of 2021 (n 130) art 14; Resolución 971 de 2021 (n 132) art 20.

¹⁴⁴ Resolución 5477 de 2022 (n 96) art 91.

¹⁴⁵ Resolución 971 of 2021 (n 132) art 25.

¹⁴⁶ *Ibid* arts 29 and 33.

¹⁴⁷ *Ibid* art 36.

¹⁴⁸ *Ibid* considerations.

special needs of vulnerable groups, such as the indigenous population, members of the LGBTI+ community, children and adolescents, disabled persons, victims of trafficking and every other person requiring special treatment to access the ETPV for the fulfilment of their rights.”¹⁴⁹

The ETPV thus aims to combine immediate temporary protection with long-term integration, also including the possibility of acquiring the Colombian nationality. While it does represent a clear shift from fragmented, short-term permits to a comprehensive and structured regime, and it was praised internationally by UN High Commissioner for the Refugees, Filippo Grandi, as an extraordinary gesture of humanity, and commitment to human rights in the region,¹⁵⁰ the next chapters of this work will explore specific areas of humanitarian protection and highlight the remaining protection gaps left by the ETPV.

¹⁴⁹ *Ibid.*

¹⁵⁰ UNHCR, ‘Discurso del Alto Comisionado de Naciones Unidas para los Refugiados’ (UNHCR, 5 October 2021) <https://www.acnur.org/noticias/news-releases/discurso-del-alto-comisionado-de-naciones-unidas-para-los-refugiados-sobre> accessed 28 August 2025.

V. Compliance of the ETPV with Colombia's Human Rights Obligations

The previous chapter explained the evolution of Colombia's migration response and the adoption of the ETPV as a major step to regularize the status of Venezuelan nationals and through that, to better protect their fundamental rights. As previously mentioned, this instrument was internationally described as a progressive and humane response to the biggest migration crisis in the region.¹⁵¹ However, a closer analysis through the lens of Colombia's binding international human rights obligations reveals that, while the ETPV broadly takes into account those standards and aims to align with them, it does not fully meet them. This chapter looks into the compliance of the ETPV with international human rights law, highlighting the positive effects of this measure, but also focusing on certain areas where protection gaps were given, or remain: the right to equality, procedural guarantees and due process, gender-based protection, and the right to privacy.

1. Lights and Shades of the ETPV

Indeed, the ETPV was rightly praised, as its aim of regularizing Venezuelan migrants as a group, rather than responding to the displacement wave with restrictive or punitive approaches, did facilitate the enjoyment of fundamental rights for the Venezuelan population in Colombia. Both, the IACtHR and the United Nations General Assembly have held that undocumented status should not be a barrier to the enjoyment or enforceability of rights.¹⁵² Thus, while the Colombian government is not directly "granting" new rights through the ETPV, it has created the legal and administrative conditions under which Venezuelan migrants can more effectively access and justiciate the rights already guaranteed under the Colombian Constitution and international human rights instruments.¹⁵³

Most notably, the ETPV has facilitated the regularization of over 71% of the Venezuelan population in Colombia by June of 2024,¹⁵⁴ providing legal documentation regardless of whether Venezuelans entered the country with authorization, a valid passport or visa. By

¹⁵¹ *Ibid.*

¹⁵² IACtHR, *OC-18/03* (n 26) para 114, citing United Nations General Assembly (UNGA), *Resolution 54/166: Protection of Migrants* (24 February 2000).

¹⁵³ Amaya-Castro, Moreno and Calderón Chelius (n 29) 20-21.

¹⁵⁴ Universidad del Rosario, *Reporte No 25 de Bitácora Migratoria* (Observatorio de Venezuela, June 2024) 2 <https://urosario.edu.co/sites/default/files/2024-06/reporte-junio-de-bitacora-migratoria.pdf>

allowing this documentation regardless of migratory status, Colombia opened the door for Venezuelan nationals to exercise their fundamental rights.

As previously explained, access to health care, education, and the formal labor market was made possible through the PPT.

Providing access to health care ensures to some level compliance with Colombia's obligations regarding the right to health care under Art. 12 ICESCR,¹⁵⁵ Art. 28 of the CMW,¹⁵⁶ Art. 10 of the Additional Protocol to the ACHR in the Area of Economic, Social and Cultural Rights,¹⁵⁷ Principle 35 of the InterAmerican Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking,¹⁵⁸ and the above-mentioned human rights-based approach to migrants endorsed by the IACtHR.¹⁵⁹

Similarly, providing access to education, complies with Colombia's obligations under Art. 13 ICESCR,¹⁶⁰ Art. 30 CMW,¹⁶¹ Art. 13 of the Additional Protocol to the ACHR in the Area of Economic, Social and Cultural Rights,¹⁶² Principle 37 of the InterAmerican Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking,¹⁶³ the jurisprudence of the IACtHR and Art. 28 of the CRC.¹⁶⁴

The same applies to the right to work under Arts. 6 and 7 ICESCR,¹⁶⁵ Principle 36 of the InterAmerican Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking,¹⁶⁶ and the jurisprudence of the IACtHR.¹⁶⁷

¹⁵⁵ ICESCR (adopted 16 December 1966, entered into force 3 January 1976) art 12.

¹⁵⁶ CMW (adopted 18 December 1990, entered into force 1 July 2003) art 28.

¹⁵⁷ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (adopted 17 November 1988, entered into force 16 November 1999) art 10.

¹⁵⁸ IACHR, InterAmerican Principles (n 58) Principle 35

¹⁵⁹ Yulieth Andrea Ordoñez Muñoz, Jorge Armando Cruz Buitrago and Mayra Alejandra García Ramírez, 'Mecanismos para la Garantía del derecho a la Salud de la Población Venezolana en Colombia' (Revista Escenarios Sociojurídicos, 5 December 2022), 8-10
<https://revistas.uan.edu.co/index.php/escenariosociojuridicos/article/view/1324/1018>.

¹⁶⁰ ICESCR (n 155) art 13.

¹⁶¹ CMW (n 156) art 30.

¹⁶² Additional Protocol to the ACHR (n 157) art 13.

¹⁶³ IACHR, InterAmerican Principles (n 58) Principle 37.

¹⁶⁴ CRC (adopted 20 November 1989, entered into force 2 September 1990) art 28.

¹⁶⁵ ICESCR (n 155) arts 6 and 7.

¹⁶⁶ IACHR, InterAmerican Principles (n 58) Principle 36.

¹⁶⁷ Amaya-Castro, Moreno and Calderón Chelius (n 29) 23.

In addition to facilitating access to economic and social rights, the ETPV has significantly strengthened access to civil and political rights. With a recognized migratory status, Venezuelans can open bank accounts, enter formal contracts, access legal representation, and file complaints before administrative and judicial bodies. This formal inclusion into the legal system enhances legal security and procedural safeguards, both of which are prerequisites for the effective protection of all fundamental rights.

One particularly noteworthy aspect of the ETPV is its inclusion of a special pathway for minors, a measure consistent with Colombia's international obligations to adopt protective and differentiated measures for children, given their particular vulnerability. Compliance with several regulations under the CRC, the ACHR and the jurisprudence of the IACtHR regarding the special protection for children is reflected in Arts. 25-35 of Resolution 971 of 2021.¹⁶⁸ These provisions attempt to implement international standards on children's rights by simplifying documentation processes and ensuring that the protection of minors is prioritized throughout the procedure.

Nevertheless, a specific gap in the protection of minors can still be found. Although Art. 25 of the ETPV explicitly mentions that the principle of family unity shall be taken into account when implementing the ETPV, and that the most favorable interpretation for the well-being of minors should guide its application, an extension of the PPT to the parents of minors who hold a PPT, or to minors, who are children of adults with a PPT, is not foreseen in the regulations.¹⁶⁹ Accordingly, if a child present in Colombian territory with their parents fulfils the requirements under the ETPV to obtain a PPT, but the parents do not, the parents cannot benefit from the child's migratory status. Likewise, a minor who does not fulfill the requirements under the ETPV cannot access a PPT through the migratory status of their parents who are PPT holders. This results in either the parents of the minor, or the minor, having to apply for a regular visa, which entails several financial and procedural hurdles, or, if they are unable to cover the costs of the visa process, having to leave Colombian territory. This contradicts the principle of family unity as protected by Arts. 8.1 and 9 CRC,¹⁷⁰ Art. 23 ICCPR,¹⁷¹ Art. 10 ICESCR¹⁷² and Art. 17.1 ACHR,¹⁷³ since families are being unwillingly separated as a result of the ETPV

¹⁶⁸ Resolución 971 de 2021 (n 132) arts 25-35.

¹⁶⁹ Pelacani (n 7) 29.

¹⁷⁰ CRC (n 164) arts 8.1 and 9.

¹⁷¹ ICCPR (adopted 16 December 1966, entered into force 23 March 1976) art 23.

¹⁷² ICESCR (n 155) art 10.

¹⁷³ ACHR (adopted 22 November 1969, entered into force 18 July 1978) art 17.1.

regulations. Furthermore, the only interpretation of the ETPV's regulations that would be consistent with the best interests of the child would be to allow them to remain in Colombian territory together with their family, without any further financial or procedural burdens.

An additional strength of the ETPV is its administrative inclusion of trans individuals in the registration forms. The ability to register under one's self-identified name and gender reflects a positive step towards the recognition of gender identity and the rights of the LGBTQIA+ community.

However, this inclusion is limited in practice. On the one hand, Art. 36 of Resolution 971 of 2021 requires the person to provide a public deed granted before a notary affirming the willingness to be registered under the name and the gender with which the person identifies. If this is not possible, the registration will have to continue under the name and gender given at birth, and only with the same document can the PPT be issued under the chosen name and gender.¹⁷⁴ This not only creates particularly high financial hurdles for the transgender persons who wish to benefit from these measures, but exposes also them to several bureaucratic procedures where the personnel are not trained in the specific situations of the trans community and are therefore likely to discriminate against them.¹⁷⁵ Going through documentation processes is already a burden upon the trans community due to untrained, discriminating personnel, accompanied by the possibility of re-traumatization. Accordingly, adding further documentation requirements to the RUMV and the issuance of the PPT without taking the particularities of the trans community into account, does not fully comply with the duties of Colombia in regard to the right to equality of transgender Venezuelans.

Taken together, these positive aspects demonstrate that Colombia has taken significant steps to uphold its international human rights obligations in the design of the ETPV. However, as the following sections reveal, certain population groups and procedural guarantees have not been sufficiently addressed. This results in compliance gaps, showing that the ETPV still falls short in inclusivity and legal security for the Venezuelan population in Colombia.

¹⁷⁴ Resolución 971 de 2021 (n 132) art 36.

¹⁷⁵ Pelacani (n 7) 40-41.

2. Gaps Concerning the Right to Equality

One of the most fundamental principles in international human rights law is the right to equality and non-discrimination. As extensively explained in Chapter III, this right is recognized in both universal and regional instruments, including Art. 26 ICCPR¹⁷⁶ and Arts 1.1 and 24 ACHR,¹⁷⁷ and emphasized by the IACtHR as having *jus cogens* status, applicable to all persons regardless of their migratory status.¹⁷⁸ In particular, Art. 24 ACHR affirms not only that all persons are equal before the law, but also that they are all entitled to equal protection by the law, which is the main issue when examining gaps of the ETPV in the light of human rights law. This duty to ensure effective protection against discrimination of migrants is further confirmed in Principle 12 of the InterAmerican Principles on the Human Rights of all Migrants, Refugees, Stateless Persons and Victims of Human Trafficking.¹⁷⁹

Despite Colombia's efforts to offer regularization through the ETPV, the statute introduces several mechanisms that result in indirect discrimination, particularly through the establishment of rigid timeframes and eligibility criteria.

While the number of Venezuelans who were able to regulate their migratory status reflect a significant improvement for the Venezuelan population as a whole, the ETPV excludes a large number of individuals, particularly the most vulnerable. According to *Migración Colombia*, from the 2.845.706 Venezuelans in Colombian territory by February 2024, 486.072 didn't have a regulated migratory status and an estimated 70.317 Venezuelans entered Colombia without authorization.¹⁸⁰ These numbers are, as noted by the entity, solely an estimate. Due to the large number of persons entering and exiting Colombia daily since 2015, it is nearly impossible for the Colombian government to determine exactly how many people entered without authorization, how many people do not have a regulated status yet, and how many people are excluded by the provisions of the ETPV.

It is precisely these groups, those outside of the government's scope of evaluation, those entering Colombia without authorization, those who haven't been able to enter, those who are not able to adhere to strict timelines, or those who lack a form of identification, often due to

¹⁷⁶ ICCPR (n 171) art 26.

¹⁷⁷ ACHR (n 173) arts 1.1 and 24.

¹⁷⁸ IACtHR, *OC-18/03* (n 26) paras 98, 101, 106, 109.

¹⁷⁹ IACHR, InterAmerican Principles (n 58) Principle 12 para 2.

¹⁸⁰ OM3 (n 3) 6.

economic reasons or circumstances beyond their control, the ones who are being left out by the ETPV.¹⁸¹

The cutoff date of 31 January 2021 excludes all other Venezuelan nationals who enter the Colombian territory without authorization after the 1st of February 2021, despite facing the same vulnerabilities and protection needs as those who arrived earlier. While the Colombian government justifies these strict timeframes as a means to discourage unregulated migration,¹⁸² this measure will most likely have the opposite effect. It misses the fact that irregular migration is rarely a choice or a decision that people in danger can time according to deadlines. Denying protection to those who enter after the cutoff date will not disincentivize irregular migration, it will only result in more migrants being left out without any opportunities to regularize their migratory status, leaving them unprotected and at risk of a wide range of human rights violations.

Similarly, other groups already present in Colombia are excluded by strict eligibility criteria, despite facing the same or greater vulnerabilities as the rest of the population, being left with no opportunities of regulating their migratory status. This leaves them once again in a cycle of multiple and overlapping vulnerabilities, which they are not able to escape. These groups are particularly: Venezuelans without a regulated status who cannot prove that they were present in Colombian territory by the 31st of January 2021, and undocumented adults.¹⁸³

The eligibility criteria for the ETPV are unreachable for the poorest parts of the Venezuelan population, which belong for the most part to the mentioned groups. Venezuelan documents are nearly impossible to obtain since the displacement wave started, which led to a lot of the population leaving them behind in their home countries, having them stolen during the migratory movement, or having them sold in exchange for basic needs. In a lot of cases, Venezuelan migrants settle in precarious conditions, including poor, dangerous neighborhoods, or land invasions, and often have informal renting or work agreements.¹⁸⁴ These conditions expose them to exploitation and human rights violations. Migrants struggling on a daily basis to meet their basic needs, and those of their children (since most of the population is young migrants with children¹⁸⁵) are unlikely to possess any form of identification or documentation

¹⁸¹ Pelacani (n 7) 19-20.

¹⁸² *Ibid* 20.

¹⁸³ *Ibid*

¹⁸⁴ Ordóñez and Ramírez (n 5) 160.

¹⁸⁵ OM3 (n 3) 9.

proving their presence in Colombia by a set date. They are often unable to adhere to strict timeframes because of time constraints, fear of losing their jobs by taking time for the paperwork and registration, lack of financial means to gather documentation or to go to the registration offices, or even limited literacy navigate the ETPV process. These migrants are at risk of exclusion not because of unwillingness to regularize their status, but because the system itself does not adequately accommodate their realities.

Another particularly relevant barrier is the digital divide. Although the statute does not explicitly exclude those without digital access, its high reliance on online registration and application processes imposes a significant disadvantage on migrants living in rural areas, those without internet access, or individuals with low levels of digital literacy.¹⁸⁶ This amounts to a *de facto* barrier to access that again disproportionately affects the most socioeconomically vulnerable sectors of the migrant population.

Though Resolution 971 of 2021 acknowledges that many Venezuelan migrants were not able to profit from previous measures and are exposed to labor exploitation, physical, psychological, sexual, and gender-based violence, xenophobia and other human rights violations,¹⁸⁷ and its Art. 1 states that the parts of the population in need of the most protection will receive differentiated attention,¹⁸⁸ there is no provision in this resolution that actually addresses these hardships. Normally, pieces of legislation contain exceptions to the regular process due to personal hardships, or for the most vulnerable groups, who cannot be placed in the same position as the rest of the population. Such provisions are neither in Decree 216 of 2021 nor in Resolution 971 of 2021. The ETPV does not provide alternative paths or support mechanisms for those who face practical barriers in completing the process.

However, the human rights obligations of Colombia are not only not to explicitly discriminate against certain groups, but also to protect the most vulnerable ones.¹⁸⁹ The IACtHR has emphasized that States must not only refrain from discrimination but must actively dismantle structural barriers that impede the enjoyment of rights by marginalized communities.¹⁹⁰

¹⁸⁶ Pelacani (n 7) 37.

¹⁸⁷ Resolución 971 de 2021 (n 132) consideraciones.

¹⁸⁸ Resolución 971 de 2021 (n 132) art. 1 para 2.

¹⁸⁹ ACHR (n 173) art 24.

¹⁹⁰ such as in *Case of Atala Rizzo and Daughters v Chile* (InterAmerican Court of Human Rights, 24 February 2012) https://corteidh.or.cr/docs/casos/articulos/seriec_239_ing.pdf; *Case of González et al. ('Campo Algodonero') v. Mexico* (InterAmerican Court of Human Rights, 16 November 2009) para 80 https://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf

For this reason, a violation of Arts. 1.1 and 24 ACHR¹⁹¹, of Principle 12 of the InterAmerican Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking,¹⁹² and of the human rights-based approach regarding migratory regulations of the IACtHR appears likely. Like previously explained, Colombia has the *jus cogens* obligation to not discriminate against any person because of their migratory status¹⁹³ and to protect every single person in its territory, especially vulnerable groups.¹⁹⁴ Any discrimination against certain groups through any kind of governmental act, like the relevant decree and resolution in this case, implies a violation of the non-discrimination principle.

Discrimination is defined as “any distinction, exclusion, restriction or preference which is based on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status, and which has the purpose or the effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”¹⁹⁵

While the laws introducing and implementing the ETPV do not explicitly mention a distinction of certain groups within the Venezuelan population in Colombia, it is clear that, depending on social origin, property, or status, some parts of the Venezuelan population can profit from these measures, and for others it is virtually impossible to meet the criteria, affecting the enjoyment of their fundamental rights significantly.

This could lead to indirect discrimination because of a disproportionate impact of some measures through certain groups, while the provisions may appear neutral.¹⁹⁶ Indirect discrimination is defined by the Committee on Economic, Social and Cultural Rights (ESCR Committee) as “laws, policies or practices which appear neutral at face value, but have a

¹⁹¹ ACHR (n 173) art 24.

¹⁹² IACHR, InterAmerican Principles (n 58) Principle 12 para 2.

¹⁹³ IACtHR, *OC-18/03* (n 26) paras 98, 101, 106, 109.

¹⁹⁴ ACHR (n 173) art 24 second sentence.

¹⁹⁵ InterAmerican Commission on Human Rights, *Compendium on Equality and Non-Discrimination: InterAmerican Standards* (12 February 2019) 19 <https://www.oas.org/en/iachr/reports/pdfs/compendium-equalitynondiscrimination.pdf>

¹⁹⁶ *Ibid* 32; IACHR, *Report No 85/10, Case 12.361, Merits, Gretel Artavia Murillo et al (“In vitro fertilization”) v Costa Rica* (14 July 2010) para 125 <https://summa.cejil.org/en/entity/zhmzjugvgrxuug3p3rd1v2t9/metadata?file=1528307424365h7jb6d6vln7jhcr2bfdy4x6r.pdf&page=1>.

disproportionate impact on the exercise of Covenant rights as distinguished by prohibited grounds of discrimination”¹⁹⁷

The ETPV appears not only as neutral, but it also states the will of a differentiated approach towards more vulnerable groups. However, as shown above, the most vulnerable groups of Venezuelan migrants are excluded from these provisions by unreachable timeframes and eligibility criteria, affecting all of their fundamental rights. There are no explicit criteria distinguishing them from the other parts of the Venezuelan population, but they are most likely to be affected by the strictness of the provisions. Additionally, the way in which they are affected is significantly disproportionate compared to other groups, since not being able to regulate their migratory status leaves them at risk of all kinds of human rights violations.

Although the ETPV is formally inclusive, its rigid application of uniform procedures results in unequal access in practice. This discrepancy between legal form and social reality constitutes a failure to ensure substantive equality, as required under Colombia's international human rights obligations. Thus, the Colombian government is not completely fulfilling its responsibilities regarding the right to equality and the principle of non-discrimination under regional and universal human rights law. Moreover, the absence of a differentiated approach in the design and implementation of the ETPV fails to acknowledge the particular challenges faced by the most vulnerable groups and therefore to protect their right to equality before the law.

3. Absence of a Gender-Based Approach

Although women constitute 51,75 % of the Venezuelan migrant population in Colombia,¹⁹⁸ the ETPV does not incorporate a gender-sensitive perspective in either its design or implementation. This misses the fact that the crimes that migrants in Colombia are most at risk of are violence, exploitation and sexual instrumentalization, which particularly affect women solely due to their gender.¹⁹⁹ Migrant women are exposed to a double discrimination: as migrants and as women. The CEDAW Committee has further clarified that migrant women

¹⁹⁷ InterAmerican Commission on Human Rights (IACHR), *The work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*. (OAS, 3 November 2011) para 20 <https://www.oas.org/en/iachr/women/docs/pdf/womendesc2011.pdf>

¹⁹⁸ OM3 (n 3) 9.

¹⁹⁹ Universidad del Rosario (n 154) 3.

are exposed to heightened risks of gender-based violence, exploitation, and unequal access to healthcare and labor protections.²⁰⁰

This reality is also portrayed by data from Colombia's Ministry of Labor, according to which the percentage of migrant women working is 36,1 % lower compared to migrant men. They also usually work in positions socially classified as women's duties, such as cooking and waitressing reaching 20,30 %, or cleaning work, up to 11,8 % of the total of working migrant women. Most enter informal work agreements and are therefore underpaid, receiving on average 801.910 COP per month, compared with 955.682 COP for migrant men, and 1'556.343 COP for Colombian women.²⁰¹ This study was conducted in 2023, when the monthly minimum wage amounted to 1'160.000 COP (272,19 US Dollars).²⁰² In sum, Venezuelan women in Colombia are exposed to the vulnerabilities of migration when compared to Colombian women, and gender-specific vulnerabilities when compared to Venezuelan men; hence: double discrimination.

International and regional human rights law requires Colombia to adopt migration policies that account for the structural disadvantages women face. Therefore, the absence of specific mechanisms within the ETPV to respond to these challenges reveals a significant protection gap linked to the right to equality and the principle of non-discrimination mentioned above, but with regard specifically to women.

Art. 1 of the CEDAW defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”²⁰³

According to the CEDAW, Colombia is obliged not only to refrain from discriminatory measures, but also to eliminate such discrimination in law and practice and to ensure substantive

²⁰⁰ Committee on the Elimination of Discrimination against Women, *General Recommendation No 26 on women migrant workers* (5 December 2008) paras 13-22 <https://www.refworld.org/legal/general/cedaw/2008/en/61897>.

²⁰¹ Equilibrium Social Development Consulting (SDC) (n 101) 79-80.

²⁰² Salario Mínimo Colombia, ‘Salario Mínimo Colombia 2023’ <https://www.salariominimocolombia.net/2023> accessed 10 September 2025.

²⁰³ CEDAW (adopted 18 December 1979, entered into force 3 September 1981) art 1.

equality between women and men in all areas of public life.²⁰⁴ For this, Colombia has to take appropriate measures to eliminate those obstacles that especially women face, through its legislation and institutional reforms. The CEDAW Committee, in Recommendation No. 26 on women migrant workers, lists states' responsibilities, here, Colombia's responsibilities, to formulate comprehensive gender-sensitive and human rights-based migration policies to ensure the protection of women's fundamental rights.²⁰⁵ Even former U.N. Special Rapporteur on violence against women has also endorsed the interpretation that given that a customary international law obligation to prevent acts of violence against women emerges out of practice and *opinio juris*.²⁰⁶

Similarly, the InterAmerican Convention on the Prevention, Punishment and Eradication of Violence against Women obliges Colombia to protect women against violence and to include in its domestic legislation any provisions needed to eradicate gendered forms of discrimination against women.²⁰⁷ This Convention defines in Art. 6 that every woman's right to be free from violence also includes the right to be free from all forms of discrimination.²⁰⁸ Furthermore, the IACtHR held in its landmark case on women's rights, *González et. al. ("Cotton Field") v. Mexico*, that States should have an appropriate legal framework for protection in cases of violence against women to fully comply with their obligations under the ACHR and the InterAmerican Convention on the Prevention, Punishment and Eradication of Violence against Women.²⁰⁹

These authorities leave no doubt that Colombia is bound to adopt migration policies that address the differentiated risks faced by women to protect their fundamental rights and, through that, prevent their discrimination based on gender. A gender-based approach is needed throughout all state practices ensuring that the structural vulnerabilities that women face as a group do not diminish the enjoyment of their rights, particularly for migrant women.

²⁰⁴ CEDAW (n 203) arts 2 and 3.

²⁰⁵ CEDAW Committee (n 200) para 23.

²⁰⁶ UN General Assembly, 'Adequacy of the international legal framework on violence against women' (Secretary General, 19 July 2017) para 79
<https://documents.un.org/doc/undoc/gen/n17/214/69/pdf/n1721469.pdf>

²⁰⁷ InterAmerican Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention Belém do Pará) (adopted 9 June 1994, entered into force 5 March 1995) art 7.

²⁰⁸ Belém do Pará (n 207) art 6a.

²⁰⁹ *Case of González et al ("Campo Algodonero") v Mexico* (n 190) para 258.

However, the ETPV operates within a formally “neutral” framework that disregards the gendered reality of Venezuelan displacement. Resolution 971 of 2021 acknowledges in its considerations that women, children, and other vulnerable groups face heightened risks of exploitation and violence, but it does not apply this recognition into differentiated procedures or institutional safeguards.²¹⁰

While an explicit distinction on gender is not mentioned in the ETPV, under the definition of discrimination of the CEDAW, exclusion on the basis of sex also covers government actions that may lead to discrimination.²¹¹ In this regard, an exclusion of women, like the exclusion of other groups mentioned in the previous section, is clear. Venezuelan women in Colombia face compounded burdens. As primary caregivers, they often lack the time and resources to complete lengthy and strict registration processes, leaving them disproportionately excluded from the benefits of the statute. Gender-based violence, domestic violence, fewer work opportunities, greater financial burdens, and other circumstances make the requirements of the ETPV unachievable for many women.

For this reason, a differentiated approach addressing the structural inequalities of women, just as the previously addressed groups, is necessary for their inclusion in the ETPV. Therefore, a gender “neutral” framework results in the exclusion of women on the basis of sex, which has the effect of impairing the recognition of their fundamental rights. The ETP thus discriminates women by not ensuring a gender-based approach and ignoring their vulnerabilities as a group.

Consequently, the absence of differentiated measures contradicts the principle of equality for women as articulated by several human rights treaties, particularly the CEDAW, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, and the jurisprudence of the IACtHR. By treating women and men as formally equal applicants without accounting for the structural disadvantages that women face, the ETPV perpetuates inequality in practice.

As briefly mentioned above, the Colombian Constitutional Court held in the case T-166/24 concerning a Venezuelan woman and migratory regulations, that state authorities must adopt gender-sensitive interpretations in all administrative and legal proceedings involving vulnerable

²¹⁰ Resolución 971 de 2021 (n 132) consideraciones.

²¹¹ CEDAW (n 203) art 1.

populations.²¹² The Court has made clear that the absence of gender-sensitive measures in administrative processes can itself constitute a violation of the principle of equality before the law.²¹³ However, the strict and uniform procedures of the ETPV fall short of this standard, as they do not provide exceptions or flexible mechanisms for women who face barriers in meeting documentation requirements or registration deadlines.

In practice, the consequences of this omission are evident. Women working in the informal sector, often in domestic labor, lack the flexibility to adhere to strict timelines, cannot present documents proving their presence in Colombia by a set date, or do not possess any form of identification. Adolescent mothers and pregnant women are disproportionately excluded from regularization procedures because they are unable to comply with documentation requirements. The absence of a gender perspective in the ETPV leaves Venezuelan women in Colombia without special protection as part of not only one vulnerable group, migrants, but of two of them: women migrants.

In sum, the absence of a gender-based approach within the ETPV reveals a structural blind spot in Colombia's migration policies dealing with the Venezuelan displacement wave. While the statute formally extends protection to all Venezuelan migrants, its failure to adopt targeted measures for women contradicts Colombia's obligations under international human rights law and its own constitutional jurisprudence. As a result, Venezuelan migrant women are left disproportionately vulnerable to human rights violations, which leads the ETPV to fail in ensuring equality and non-discrimination in practice.

4. Gaps Concerning Procedural Guarantees

The right to due process constitutes a fundamental guarantee of the rule of law, binding Colombia both domestically and internationally. Universally, Art. 14 ICCPR establishes that all persons shall be equal before the courts, but focuses mainly in the rights that persons have when criminal charges against them are being determined,²¹⁴ and Art. 13 ICCPR explicitly sets out the rights of aliens to due process during migratory expulsion proceedings.²¹⁵ Regionally, Art. 8 ACHR establishes the right to a fair trial of every person, distinguishing in its second

²¹² Sentencia T-166/24 (n 87) para 18 and 25.

²¹³ *Ibid* paras 18-20

²¹⁴ ICCPR (n 171) art 14.

²¹⁵ *Ibid* art 13.

paragraph certain guarantees particular to criminal offenses,²¹⁶ and Art. 25 ACHR recognizes the right to judicial protection of all persons and the duty of all States Parties, including Colombia, to ensure effective remedies by the competent legal authorities of the country.²¹⁷ At the constitutional level, the protection goes further. Art. 29 of the Colombian Constitution enshrines the right to due process in every kind of judicial and administrative procedure.²¹⁸

The IACtHR has developed a rich body of jurisprudence specifying the content of the rights guaranteed in Arts. 8 and 25 ACHR and interpreting their scope as broader than a literal interpretation may suggest. In the above-mentioned Advisory Opinion OC-18/03, *Juridical Condition and Rights of Undocumented Migrants*, the Court defines due legal process as “all the requirements that must be observed in the procedural stages in order for an individual to be able to defend his rights adequately vis-à-vis (...) any proceeding, whether of an administrative, punitive or jurisdictional nature”.²¹⁹ It also underlined that, while states may establish migratory control mechanisms, these must be applied with strict regard for the guarantees of due process and respect for human dignity, and that due process of law is a right that must be guaranteed to all people regardless of their migratory status.²²⁰

In this advisory opinion, the Court cites its other landmark opinion on due process guarantees, Advisory Opinion OC-16/99, *The Right to Information on Consular Assistance within the Framework of the Guarantees of Due Process of Law*, which further affirms that the judicial process must identify and correct, with countervailing measures, any possible disadvantages of persons during any procedure to effectively guarantee the due process and equality before the law.²²¹ In the case of *Expelled Dominicans and Haitians v. Dominican Republic*, the Court reiterated these findings and affirmed the following basic guarantees that must be ensured in every procedure:

²¹⁶ ACHR (n 173) art 8.

²¹⁷ *Ibid* art 25.

²¹⁸ Constitución Política de Colombia (n 62) art 29

²¹⁹ IACtHR, OC-18/03 (n 26) para 123 citing *Case of Baena-Ricardo et al. v Panama* (InterAmerican Court of Human Rights, February 2 2001) para 124 https://www.corteidh.or.cr/docs/casos/articulos/seriec_72_ing.pdf; *Case of Ivcher-Bronstein v Peru* (InterAmerican Court of Human Rights, September 24 1999) para 102 https://corteidh.or.cr/docs/casos/articulos/seriec_54_ing.pdf; *Case of the Constitutional Court v Peru* (InterAmerican Court of Human Rights, January 31 2001) para. 69 https://www.corteidh.or.cr/docs/casos/articulos/seriec_71_ing.pdf; and *Advisory Opinion OC-9/87: Judicial Guarantees in States of Emergency* (InterAmerican Court of Human Rights, 6 October 1987) para 27 https://www.corteidh.or.cr/docs/opiniones/seriea_09_ing.pdf.

²²⁰ IACtHR, OC-18/03 (n 26) paras 119 and 121.

²²¹ *Advisory Opinion OC 16-99: The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*” (InterAmerican Court of Human Rights, 1 October 1999) paras 117 and 119 https://www.corteidh.or.cr/docs/opiniones/seriea_16_ing.pdf.

- To be informed expressly and formally of the charges against them and the reasons for the expulsion or deportation, with information on their rights during the procedures
- If an unfavorable decision is taken, the right to request a review of their case before the competent authority and to appear before this authority in that regard
- To receive formal legal notice of the eventual expulsion decision which must be duly reasoned pursuant to the law.²²²

Also the Colombian Constitutional Court has applied these principles and made clear that due process guarantees must be applied in every migratory expulsion process, even if the expulsion is based on the grounds of national security.²²³

Thus, these guarantees apply, according to Colombian constitutional law and the IACtHR's interpretation of the ACHR, not only in criminal matters but also in administrative procedures. Consequently, Colombia must take them into account during the ETPV's procedures, including the issuance or cancellation of the PPT, and also with regard to migratory sanctions in the cases determined by Decree 216 of 2021 and Resolution 971 of 2021.²²⁴

Against this background, the ETPV falls short in several critical respects. First, Art. 15 of Decree 216 of 2021, referenced in Art. 21 of Resolution 971 of 2021,²²⁵ allows the cancellation of the PPT in cases of infractions against the Colombian legal regime before, during or after the issuance of the PPT, when *Migración Colombia* considers that the presence of the Venezuelan national is an inconvenience or a risk to national security, if the Venezuelan national leaves Colombia for more than 180 days, and other reasons. Colombia is allowed to regulate such cases and give *Migración Colombia* a certain margin of discretion for taking every individualized decision. However, the same article further states that these cancellations are not subject to any administrative appeal, leaving only the option of a judicial proceeding, or obliging the person to leave the country within thirty days.²²⁶

This provision explicitly denies individuals an effective remedy against the cancellation of their PPT, which means falling into an unauthorized migratory status that not only forces them to leave Colombia, but also leaves them with no access to their fundamental rights. Putting aside

²²² *Case of Expelled Dominicans and Haitians v Dominican Republic* (n 69) para 356.

²²³ Pelacani (n 7) 22.

²²⁴ Decreto 216 de 2021 (n 130); Resolución 971 de 2021 (n 132).

²²⁵ Resolución 971 de 2021 (n 132) art 21.

²²⁶ Decreto 216 de 2021 (n 130) art 15.1.

the fact that the grounds for cancellation lack legal clarity due to the broad margin of appreciation that *Migración Colombia* has and the vague conditions that apply, Art. 15.1 of the Decree purposely shortens the procedural rights of Venezuelan nationals in such procedures guaranteed in the ACHR and even the Colombian Constitution.²²⁷

The IACtHR, in its interpretation of Art. 8 ACHR, requires that in the case of an unfavorable decision, that the person can request the review of their case by the same authority. Accordingly, a Venezuelan national in possession of the PPT who is subject to its cancellation must be able to request the review of the case by *Migración Colombia* and must be able to appear before this authority in this regard. If this is not the case, the guarantees of the due process under Art. 8 ACHR, as interpreted by the IACtHR, are not met and the right to due process is violated. Nonetheless, Art. 15.1 of the Decree explicitly leaves out the possibility of a review of the cancellation by *Migración Colombia*, thus violating the right to due process of Venezuelan nationals during these proceedings under Colombian constitutional and international law.²²⁸

Secondly, in the considerations of Decree 216 of 2021 and Resolution 971 of 2021, the authorities argued that due process guarantees in administrative law are weaker than those in criminal law.²²⁹ To support this claim, the government cited Constitutional Court decision C-616/2002,²³⁰ which concerned tax sanctions and is therefore inapplicable to migration procedures, which may determine a person's ability to remain in the country and have direct consequences for access to their fundamental rights.²³¹ This consideration does not align with Colombia's obligations regarding the right to due process of Venezuelan migrants. It contradicts Art. 29 of the Colombian Constitution,²³² and it also contradicts the IACtHR's jurisprudence under Art. 8 ACHR.²³³ As previously mentioned, Art. 8 ACHR, though titled "Right to a fair Trial" is not restricted to judicial remedies, but applies to any procedure of civil, labor, fiscal or any other nature, and therefore the procedures concerning the ETPV.²³⁴ While the considerations section of the Decree and Resolution are not *per se* applicable norms, they

²²⁷ *Ibid.*

²²⁸ *Ibid.*

²²⁹ Pelacani (n 7) 22; Decreto 216 de 2021 (n 130) consideraciones; Resolución 971 de 2021 (n 132) consideraciones.

²³⁰ Sentencia C-616/2002, Corte Constitucional de Colombia (6 August 2002) <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=9906>.

²³¹ Pelacani (n 7) 22-23.

²³² Constitución Política de Colombia (n 62) art 29.

²³³ ACHR (n 173) art 8.

²³⁴ *Case of Expelled Dominicans and Haitians v Dominican Republic* (n 69) para 349.

do guide the authorities in their interpretation and application. The regulations are based on these considerations and show the direction in which the measures are to be applied.

A further concern arises from the vague grounds for refusal of a PPT. Art. 15.1 of Resolution 971 of 2021 affirms that compliance with the established requirements for the PPT does not guarantee its issuance, leaving the final decision at the discretion of *Migración Colombia*.²³⁵ This broad discretion, unaccompanied by clear criteria or transparent procedures, undermines the principle of legal certainty and exposes applicants to arbitrariness, both prerequisites for fair procedures. The same broad margin of appreciation granted to *Migración Colombia* also appears in the process of the *prueba sumaria idónea*, the process in which a Venezuelan national without a regulated status proves his or her presence in Colombia before the 31st of January 2021. Art. 6.1 of Resolution 971 of 2021 empowers *Migración Colombia* to reject documents deemed not authentic or fraudulent, without specifying standards of proof, notice requirements, or opportunities to contest the assessment.²³⁶ The same applies to the process of the PPT's cancellation by authorities, which is solely at the discretion of *Migración Colombia* and, as mentioned before, cannot be reviewed by the same authority.²³⁷

The consequences of these shortcomings are significant. Migrants who are denied or lose their PPT face the loss of legal status, exclusion from healthcare and education, inability to work formally, and exposure to expulsion. Unlike criminal proceedings, where rights such as presumption of innocence, impartial adjudication, defense by counsel, and reasoned decisions are guaranteed, the ETPV offers no equivalent protections. The resulting difference places migrants at greater risk in administrative procedures than they would face in criminal proceedings. In sum, the ETPV represents a significant step in migration policies due to its regularization aims, but its procedural design remains deficient. By granting excessive discretion to *Migración Colombia* without any set reasoning requirements, cutting appeal rights and relying on inapplicable precedents to weaken due process in administrative procedures, the statute undermines Colombia's obligations under both its Constitution and binding international treaties.

²³⁵ Resolución 971 de 2021 (n 132) art 15.1.

²³⁶ *Ibid* art 6.1.

²³⁷ *Ibid* art 21; Decreto 216 de 2021 (n 130) art 15 1.

5. (Former) Gaps Concerning Personal Data Protection

The protection of personal data is recognized in both Colombian constitutional law and in international human rights law as an essential part of the right to privacy. At the universal level, Art. 17 ICCPR guarantees the right to privacy and protection against arbitrary or unlawful interference.²³⁸ Additionally, the Human Rights Committee clarified in General Comment No. 16 that the gathering and holding of personal information must be provided by law and that individuals must be able to know which information is held concerning them and by whom, and be able to request rectification or elimination of incorrect data.²³⁹

Though adopted in 1990 by the United Nations General Assembly, the Guidelines for the Regulation of Computerized Personal Data Files still hold legal weight and establish several principles concerning the minimum guarantees that should be provided in national legislations to computerized and manual files.²⁴⁰ Specifically, principle 5 states that data likely to give rise to discrimination, such as information on racial or ethnic origin, color, sex life, political opinions, religion, or other beliefs, should only be compiled within the limits prescribed in the field of human rights protection.²⁴¹

In the InterAmerican system, Art. 11 ACHR protects the right to privacy and prohibits arbitrary or abusive interference with private life.²⁴² Based on Art. 11 and 13 ACHR (the right to privacy and the freedom of thought and expression, respectively),²⁴³ the InterAmerican Juridical Committee of the OAS established the Updated Principles on the Protection of Personal Data and Privacy, which were approved by the General Assembly of the OAS in 2021.²⁴⁴ As a soft-law instrument, they intend to guide the states in their regulations regarding the protection of

²³⁸ ICCPR (n 171) art 17.

²³⁹ UN Human Rights Committee, *CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation* (8 April 1988) para 10 <https://www.refworld.org/legal/general/hrc/1988/en/27539>.

²⁴⁰ UN General Assembly (UNGA), Resolution 45/95: Guidelines for the Regulations of Computerized Personal Data Files (14 December 1990) UN Doc A/RES/45/95 Principle 10 <https://www.refworld.org/policy/legalguidance/unga/1990/en/13761>.

²⁴¹ *Ibid* Principles 5 and 6

²⁴² ACHR (n 173) art 11.

²⁴³ *Ibid* arts 11 and 13.

²⁴⁴ Organisation of American States (OAS), InterAmerican Juridical Committee, *Principios actualizados sobre la protección de datos personales* (adopted by OAS General Assembly: Resolution AG/RES. 2974 (LI-O/21), 11 November 2021) 9 https://www.oas.org/es/sla/cji/docs/Publicacion_Proteccion_Datos_Personales_Principios_Actualizados_2021.pdf.

personal data, so that they comply with the provisions of the ACHR and the jurisprudence of the IACtHR.²⁴⁵

Of particular relevance for the present work is principle 2, titled Transparency and Consent.²⁴⁶ According to this principle, before or at the moment in which the personal data is collected, the entity responsible for the data, the purpose of the collection, the juridical basis for the collection, who will also receive access to the data, and the rights of the personal data's owner, have to be specified and clearly communicated.²⁴⁷ If the collection and treatment of the data is based on the consent of the owner, principle 2 specifies that the data can only be collected with previous consent of the concerning person, which has to be free, unequivocal and informed.²⁴⁸ The InterAmerican Juridical Committee further specifies that for the consent to be free, the person has to be able to make an actual decision and should not risk any negative consequences if consent is denied.²⁴⁹

Following these principles, the IACtHR has also established that the collection and treatment of personal data is only possible if free and informed consent is given, and it pursues a legitimate aim.²⁵⁰ The Court further developed in its jurisprudence the right to informational self-determination,²⁵¹ which is based on the national regulations of the region, Arts. 11 and 13 ACHR, and also protected by Art. 25 ACHR (right to judicial protection).²⁵² The content of this right refers to the autonomy and freedom of a person to self-determine and for this, a right to access and control of personal data with 5 further requirements has to be guaranteed.²⁵³ Accordingly, every person has the right to know who and which personal data about them is being collected or treated, to rectify the information if its is incorrect, to demand the removal of unlawful data holding, to oppose to data treatment, and to receive a clear summary of the data processing.²⁵⁴

²⁴⁵ *Ibid* 10.

²⁴⁶ *Ibid* 12.

²⁴⁷ *Ibid* 31.

²⁴⁸ *Ibid*

²⁴⁹ *Ibid* 32.

²⁵⁰ *Caso Miembros de la Corporación Colectivo de Abogados "José Alvear Restrepo" vs Colombia* (InterAmerican Court of Human Rights, 18 October 2023) para 573
https://corteidh.or.cr/docs/casos/articulos/seriec_506_esp.pdf.

²⁵¹ *Ibid* para 586

²⁵² ACHR (n 173) arts 11, 13 and 25.

²⁵³ *Caso Miembros de la Corporación Colectivo de Abogados "José Alvear Restrepo" vs Colombia* (n 250) para 585.

²⁵⁴ *Ibid*.

The interpretation of the right to privacy and to informational self-determination on the universal and regional levels clearly imposes not only negative obligations to abstain from unlawful interference, but also positive duties on states to establish transparent procedures, effective safeguards and oversight mechanisms for the collection, storage and treatment of personal data.

Against this framework, the ETPV raised multiple concerns. To obtain the PPT, Venezuelan nationals are required to register in the RUMV and provide extensive personal and biometric data. The RUMV intends to collect data on the conditions of the Venezuelan population in Colombia and for that purpose, Venezuelan nationals must fill out a survey about their health, education and academic conditions, as well as their steps towards integration.²⁵⁵ Although the regulations refer to the “consent” of the applicant for the processing of such data, this consent is in practice not freely given. Since registration and the provision of data are mandatory steps for accessing the PPT, and without it migrants cannot regularize their status or may even face migratory sanctions, migrants are effectively obliged to consent.²⁵⁶ This undermines the principle of consent required by the OAS and the IACtHR, since consent given under coercive or structurally vulnerable conditions cannot be regarded as free. As previously explained, the person must be able to deny consent without facing any negative consequences, which is not the case for Venezuelan migrants who want to benefit from the ETPV.

Additionally, the transparency of the collection and processing of personal data was not fully achieved at the beginning of the RUMV. On the one hand, Art. 3 of Resolution 971 of 2021²⁵⁷ merely references Law 1581 of 2012,²⁵⁸ which regulates general provisions for personal data protection; Decree 1377 of 2013,²⁵⁹ which further regulates Law 1581 of 2012; and the data treatment policy of *Migración Colombia* adopted by Directive 007 of 2019²⁶⁰ and last updated

²⁵⁵ Resolución 971 de 2021 (n 132) art 9.

²⁵⁶ Pelacani (n 7) 35-36.

²⁵⁷ Resolución 971 de 2021 (n 132) art 3.

²⁵⁸ Colombia, Ley 1581 de 2012, ‘Por la cual se dictan disposiciones generales para la protección de datos personales’ (17 October 2012) <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=49981>

²⁵⁹ Colombia, El Presidente de la República de Colombia, Decreto 1377 de 2013, ‘Por el cual se reglamenta parcialmente la Ley 1581 de 2012’ (27 June 2013)

<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=53646#0>

²⁶⁰ Colombia, Migración Colombia, Directiva 007 de 2019, ‘Adopción de la política de tratamiento de datos personales de la Unidad Administrativa Especial Migración Colombia’ (23 July 2019) https://unidad-administrativa-especial-migracion-colombia.micolombiadigital.gov.co/sites/unidad-administrativa-especial-migracion-colombia/content/files/000026/1293_politica-datos-personales-uaemc.PDF

by Resolution 1622 of 2025.²⁶¹ According to Art. 3 of Resolution 971 of 2021, personal data will be collected and treated in accordance with the mentioned regulations. However, there was no further information on the data processing, or the possibilities that Venezuelan nationals had to protect their right to privacy when their personal data has been collected during the RUMV.²⁶² These concerns are heightened by the type of data being collected. Biometric information, socio-economic status (which could lead to further discrimination,) children's data, and information related to gender identity fall under the category of sensitive data, which requires heightened safeguards.

In this regard, Resolution 1622 of 2025 was a major step towards transparency in the treatment of the data and the rights of the person concerned. A clear purpose and procedure for data collection and treatment is established, the responsibilities of *Migración Colombia* are set out, and the rights of the person whose data was collected are mentioned with clear steps on how to exercise them.²⁶³ Even special measures for the treatment of minors' personal data were provided in the update of *Migración Colombia's* data treatment policy.²⁶⁴ The only concern that nevertheless arises is that Venezuelan nationals who gave their consent and had their personal data collected and processed before transparency as required by international law was achieved, were not yet under this new regime, and could therefore not be sufficiently informed of their rights and the ways of exercising them.

The ETPV therefore could reveal some gaps in data protection, since the requirement to provide personal data as a condition for regularization means that consent is not truly voluntary and therefore not fully compliant with international human rights law. These shortcomings indicate that while the ETPV represents a significant step forward in migration governance, it could simultaneously expose migrants to risks of privacy violations and could undermine their right to privacy and informational self-determination. To comply with its human rights obligations under Art. 17 ICCPR, Art. 11 ACHR and principle 2 of the OAS' Updated Principles on the

²⁶¹ Colombia, Migración Colombia, Resolución 1622 de 2025, 'Por la cual se actualiza la Política de Tratamiento de Datos Personales de la Unidad Administrativa Especial Migración Colombia y se deroga la Resolución 4684 del 24 de diciembre de 2024 "Por la cual se actualiza la Política de Datos Personales de la Unidad Administrativa Especial Migración Colombia, se deroga la Directiva 007 del 23 de julio de 2019 la cual adoptó "la Política de Datos Personales de la Unidad Administrativa Especial Migración Colombia" y de dictan otras disposiciones' (10 June 2025) https://unidad-administrativa-especial-migracion-colombia.micolombiadigital.gov.co/sites/unidad-administrativa-especial-migracion-colombia/content/files/002056/102795_resolucion-1622-de-2025-con-anexo-politica-tratamiento-datos-personales-1.pdf

²⁶² Pelacani (n 7) 36.

²⁶³ Resolución 1622 de 2025 (n 261).

²⁶⁴ *Ibid* 6.5.

Protection of Personal Data and Privacy, Colombia may be obliged to adopt clearer regulations guaranteeing that consent is genuinely voluntary.

However, personal data collection and processing for migratory purposes will always be necessary. If a person does not want to provide their consent, the process of regularization cannot possibly take place. Consent is a requirement to continue with the process, not only from the Venezuelan national's side, but also for *Migración Colombia*. The IACtHR held in *CAJAR v. Colombia* that processing of personal data may rest either on the free and informed consent of the individual, or on a clear and detailed legal framework that defines the purposes, categories, retention periods, and safeguards for data processing, while ensuring effective remedies such as access, rectification, and erasure.²⁶⁵ Where fully free consent is not possible, there have to be several safeguards for the affected person, which have been established by Resolution 1622 of 2025.²⁶⁶

With the adoption of Resolution 1622 of 2025, Colombia has taken important steps towards aligning the ETPV framework with its obligations under international human rights law. By defining clearer purposes for data collection, strengthening transparency, and introducing a clear remedy procedure, the country has created a regulatory basis that responds to the standards set out by the OAS and the IACtHR. However, given the very recent adoption of these rules, it remains to be seen how they will be implemented in practice and whether they will effectively guarantee protection in line with international human rights law. The compliance of the ETPV with human rights law in the field of the right to privacy will solely depend on the practical implementation of these regulations, assuring a consistent application and effective remedies for affected Venezuelan nationals.

²⁶⁵ *Caso Miembros de la Corporación Colectivo de Abogados "José Alvear Restrepo" vs Colombia* (n 250) para 573.

²⁶⁶ Resolución 1622 de 2025 (n 261).

VI. Suggestions for Better Compliance

As extensively explained, despite its several achievements, the ETPV remains in certain areas non-compliant, when measured against Colombia's international human rights obligations, particularly in regard to the right to equality, the principle of non-discrimination and the right to due process of the Venezuelan migrants. The suggestions below respond directly to the concrete deficits identified in the previous chapter and take into account further areas of improvement for Colombian migratory policies toward the Venezuelan migration crisis. They intend to convert a formally generous regularization statute into a framework that fully secures an equal treatment of all Venezuelan migrants, especially of the most vulnerable groups, recognizes their right to due process, and creates a better integration environment in Colombian society, in order to eliminate any human rights violations through the ETPV, whether in its positive regulations or in its application.

The most important suggestion is a comprehensive public campaign against xenophobia that reaches all areas of Colombian society and helps Venezuelans integrate better. As long as discriminatory practices persist in employment, housing, banking and everyday access to services, the protection conferred by a PPT will be more abstract than real.²⁶⁷ Principle 12 of the InterAmerican Principles on the Human Rights of all Migrants, Refugees, Stateless Persons and Victims of Human Trafficking even establishes the duty of the states, including Colombia, to implement measures such as educational and awareness campaigns promoting multicultural societies and combating discrimination or xenophobia.²⁶⁸

Starting by an information campaign directed not only to large entities or banks, but also to the regular citizen or small business owner, explaining what the PPT is, so that rejection based on ignorance is fully eliminated. Moving beyond general awareness, the campaign should also establish concrete, enforceable duties for public and private actors, accompanied by proportionate sanctions when they are not fulfilled. Employers and financial and health institutions should be legally prohibited from rejecting PPT holders solely on the basis of nationality or migratory history. In such cases, Venezuelan migrants should be able to submit complaints to the competent authorities, which should be mandated to investigate discriminations and impose the necessary sanctions in each case. This approach complies not

²⁶⁷ Equilibrium Social Development Consulting (SDC) (n 110) 75-78.

²⁶⁸ IACHR, InterAmerican Principles (n 58) Principle 12.

only with principle 12 of InterAmerican Principles on the Human Rights of all Migrants, Refugees, Stateless Persons and Victims of Human Trafficking, which requires Colombia to prevent, investigate and punish acts of racism, but also with the duty of equal protection under Art. 24 ACHR.²⁶⁹

Furthermore, the protection of migrants in transit should also be regulated. Colombia's strategic position, connecting South with Central America, acts as a corridor for mixed flows moving northward. Migrants who transit through Colombia, mostly aiming to reach the US or Canada, must cross the Darién Jungle, taking an almost deathly journey due to dangerous natural conditions and criminal groups that control the area. According to Panama's authorities, from 1st of January to 22nd of May 2024, 158.747 persons took this route to the US, and 64,21 % of them were Venezuelan nationals.²⁷⁰ While the ETPV prioritizes residence and integration, Colombia still has obligations under international law to provide at least basic humanitarian assistance to all migrants within its jurisdiction.²⁷¹

Given the high numbers of people risking their lives in Colombian territory to access Panama, Colombia should establish regulations for the protection of migrants in transition or establish a course of action regarding the precarious conditions in the Darién Jungle. Some measures could be documentation granting temporary legality, reporting channels specialized for crimes or sexual and labor exploitation around key territories, shelter and child protection, and referral pathways to complaint mechanisms. These measures reduce exposure to trafficking and abuse, fulfill the right to an effective remedy, and comply with the duty to protect all persons within the Colombian territory mentioned above.

With regard to the protection of minors, Colombia should adapt the ETPV regulations to effectively guarantee the principle of family unity and the best interests of the child. This could be achieved by allowing minors to derive their migratory status from their parents who hold a PPT, and likewise extending the permit to parents of minors who already possess one. Such reforms would prevent the separation of families and remove disproportionate financial and procedural burdens on vulnerable families.

²⁶⁹ ACHR (n 173) art 24.

²⁷⁰ Universidad del Rosario (n 154) 2.

²⁷¹ IACtHR, *OC-21/14* (n 66) paras 36-39.

A further recommendation concerns the protection of transgender Venezuelans within the framework of the ETPV. While Colombia has taken an important first step by allowing registration under one's self-identified name and gender, the additional notarial requirements create barriers that undermine the effectiveness of this measure. To ensure genuine equality, also of the trans community, Colombian authorities should simplify the procedures for gender recognition in the RUMV and PPT and make them trans-friendly. This could be achieved by removing the notarial deed requirement and training registration officials on gender diversity and non-discrimination.

Another tool of improvement, based on the findings of the previous chapter, is the establishment of a gender-based approach across the entire ETPV process. As mentioned, Venezuelan migrant women experience double discrimination when compared to Venezuelan migrant men. Colombia's obligations under the CEDAW and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women require not only formal non-discrimination but also active measures to remove structural obstacles to women's equal enjoyment of rights.²⁷² The ETPV should therefore establish gender focal points within *Migración Colombia*, allow flexible scheduling and timelines for women, especially single mothers, recognize alternative documentation where displacement or violence interrupts formal proof, and guarantee immediate support mechanisms for victims of sexual or domestic violence, trafficking or exploitation. Not only should confidential reporting channels be provided for survivors of gender-based violence, also physical and psychological help, with coordination procedures between migration, health and justice institutions. Only through these policy changes in the policies can the Colombian government truly ensure the right to equality of more than half of the population of Venezuelan migrants: Venezuelan migrant women.

In addition to a gender-based approach of the ETPV, equal access for all Venezuelan nationals also depends on fully removing digital and geographic barriers built into the ETPV, particularly during the stage of the RUMV. A more inclusive implementation strategy must combine online tools with low-tech pathways for people with low digital literacy who live in rural areas, or who are not able to modify their schedules for an in-person registration.

Also, in order to mitigate the disadvantages of the most vulnerable groups, *Migración Colombia* should accept alternative forms of proof where conventional identity documents are

²⁷² CEDAW (n 203) arts 2 and 3; Belém do Pará (n 207) arts 7-9.

unavailable. The above mentioned *prueba sumaria idónea* already allows for a broad discretion of *Migración Colombia* in this regard. Thus, the application of this discretion should have a human rights-based direction, recognizing the documentation hurdles for persons who do not have a regulated migratory status and therefore cannot legally conclude rental or work contracts, or do not possess any form of identification due the struggles of every migratory movement.

As argued in the previous chapter, the broad discretion granted to *Migración Colombia* through Decree 216 of 2021 to grant or deny the PPT even where applicants meet all formal requirements, or to cancel the PPT without any administrative appeals, is difficult to reconcile with Colombia's obligations with regard to the right to due process under constitutional and international law. Therefore, a reform should replace system that highly relies on the discretion of *Migración Colombia* when granting the PPT. Permissive verbs could be replaced with binding ones such as "shall grant", where criteria are met, and discretion allowed where the requirements are not fulfilled, or other special circumstances come into picture. This is a pathway not only to legal certainty for Venezuelan migrants, but also to simplifying *Migración Colombia's* work. Where the criteria are perfectly met and there are no other special circumstances, *Migración Colombia* does not have to make use of its discretion and can grant a PPT more quickly, instead of having to decide every PPT within its margin of appreciation.

Moreover, before any adverse decision becomes final, the person should receive the full reasons, and a real opportunity to be heard. In cases of cancellation, remedies with suspensive effect must be available to prevent irreparable harm. A review instance within *Migración Colombia*, whether a specialized appellate unit separated from first-instance caseworkers or in the same unit by another caseworker, with the above-mentioned guarantees would ensure compliance with the jurisprudence of the IACtHR of Art. 8 ACHR.²⁷³

Finally, for a better integration of Venezuelan nationals into the Colombian legal labor market, regulations regarding the recognition of professional qualifications are of utmost importance. Many Venezuelan migrants are qualified professionals whose diplomas and experience remain under-recognized, forcing them to work in sectors where a professional education is not necessary.²⁷⁴ The government should establish clear and affordable routes for the validation of secondary and higher-education diplomas, or professional licenses, coupled with transitional

²⁷³ ACHR (n 173) art 8.

²⁷⁴ Equilibrium Social Development Consulting (SDC) (n 110) 77-78.

measures such as temporary supervised practice or bridging courses, that allow easier access to the formal labor market. This policy would not only comply with Colombia's international obligations in regard to the right to work, but also reduce the risk of exploitation for Venezuelan migrants.

The proposed changes consider both the normative and practical deficits of the ETPV identified in this thesis. They preserve the ETPV's aims of regularization and long-lasting integration, while curing the specific defects that undermine equality, gender justice and procedural guarantees. Implemented with further measures in other areas, such as the education and labor sectors with regard to professional qualifications, and with campaigns directed towards the public that prevent discrimination or xenophobia against Venezuelan migrants, Colombia's treatment of Venezuelan nationals could comply, for the most part, with the country's human rights obligations. Venezuelan nationals could more easily transition to a permanent status in Colombia and integrate into Colombian society, from which both, Venezuelan migrants and Colombia would benefit. The ETPV would be a long-term, human-rights compliant framework that could be used as an example for future major displacement waves, or even for the Venezuelan migration crisis in other parts of the region.

VII. Conclusion

The Venezuelan displacement wave has posed unexpected challenges for Colombia, not only in terms of migration management, but also regarding the full realization of its human rights obligations. The ETPV was a major step in the country's migration policy. It shifted from fragmented, short-term permits to a legal framework intended to regularize all Venezuelan migrants with a long-term perspective. Though it was internationally acclaimed as an extraordinary humanitarian gesture to Venezuelan migrants, and while the ETPV indeed shows Colombia's willingness to guarantee fundamental rights equally to all persons within its territory, certain protection gaps can be found in the regulating norms that may be addressed through reforms.

This thesis has demonstrated that the ETPV, while not a requirement for the possession of fundamental rights, effectively strengthened access to essential rights, including health care, education, and work for Venezuelan migrants. By creating a pathway from irregularity to permanent residence, Colombia aligned its domestic framework with its constitutional commitments and with binding universal and regional obligations, mainly under the ICCPR, ICESCR, CEDAW, CRC, ACHR, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, and with other soft-law instruments specifically regarding the rights of migrants. The ETPV also incorporated differentiated mechanisms, for example with respect to minors' rights and transgender persons, thus taking further steps toward the realization of all fundamental rights of Venezuelan migrants.

Yet, despite these achievements, the thesis also revealed protection gaps. Strict eligibility requirements, rigid cut-off dates, and the high reliance on documentation and digital procedures result in the exclusion of precisely those groups most in need of protection, such as undocumented migrants, socio-economically marginalized groups, and those unable to comply with formal procedures. This undermines the right to equality before the law and the principle of non-discrimination, in violation of Art. 26 ICCPR²⁷⁵ and Arts 1.1 and 24 ACHR.²⁷⁶ The absence of a gender-based perspective also reinforces these structural inequalities. Venezuelan women, who face double discrimination as migrants and as women, are disproportionately excluded from the benefits of the statute. The inequality of women in practice conflicts not only with the binding obligations under the CEDAW and the Inter-American Convention on the

²⁷⁵ ICCPR (n 171) art 26.

²⁷⁶ ACHR (n 173) arts 1.1 and 24.

Prevention, Punishment and Eradication of Violence against Women, but also with the IACtHR's jurisprudence on the states' duties to ensure women's equality.

Equally problematic are the shortcomings in procedural guarantees. By granting *Migración Colombia* broad discretion to cancel or deny the PPT without effective administrative appeals,²⁷⁷ the ETPV falls short of the due process requirements under Art. 29 of the Colombian Constitution,²⁷⁸ Arts. 8 and 25 ACHR,²⁷⁹ and Art. 13 ICCPR.²⁸⁰ Jurisprudence of both the Colombian Constitutional Court and the IACtHR confirms that due process guarantees apply to all proceedings and not only criminal ones. Shortening these guarantees purposely and explicitly contradicts Colombia's constitutional and international obligations relating to the right to due process.

Moreover, the recent adoption of Resolution 1622 of 2025²⁸¹ by *Migración Colombia* demonstrates Colombia's effort to align the ETPV with its obligations in regard to the right to privacy under Art. 17 ICCPR,²⁸² Art. 11 ACHR,²⁸³ and the OAS' Updated Principles on Data Protection. While this new data treatment policy strengthens transparency and establishes effective remedies, its effectiveness will depend on implementation, and it remains to be seen whether practice will fully meet international standards.

The recommendations advanced in this work intend to address these gaps and turn the ETPV into a fully compliant framework, and to further a long-lasting integration of Venezuelan migrants into Colombian society. Dismantling structural barriers to registration, establishing a gender-based approach, guaranteeing effective remedies, and fostering integration through measures against xenophobia and discrimination would help achieving this goal.

In conclusion, the ETPV represents, for the most part, a rightly appraised response to the Venezuelan displacement wave that nevertheless needs improvement in some areas relating the human rights of Venezuelan migrants. It shows that a receiving state can respond to mass displacement with progressive policies, but it also highlights the limits of protection when

²⁷⁷ Decreto 216 de 2021 (n 130) art 15; Resolución 971 de 2021 (n 132) art 21.

²⁷⁸ Constitución Política de Colombia (n 71) art 29.

²⁷⁹ ACHR (n 173) arts 8 and 25.

²⁸⁰ ICCPR (n 171) art 13.

²⁸¹ Resolución 1622 de 2025 (n 261).

²⁸² ICCPR (n 171) art 17.

²⁸³ ACHR (n 173) art 11.

structural and societal barriers remain unaddressed. Colombia has taken an important step toward a humane response to major displacement waves, but more is required. Further improving the legal framework will guarantee not only full compliance with human rights obligations, but also access of all Venezuelan nationals to their fundamental rights. Only then can the ETPV fulfill its potential as a long-lasting framework of protection and integration, capable of setting a standard for other policies in the region or future crises globally.

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