

## Chilean Government's Response to the Venezuelan Migration and Refugee Crisis (2018-2022)

### Respuesta del Estado chileno a la crisis migratoria y de refugiados venezolana (2018-2022)

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#### ABSTRACT

Through documentary analysis, this qualitative study examines Chile's response to the crisis of Venezuelan migrants and refugees, critically evaluating the implemented measures: the requirement of consular visas, de facto denial of refuge, and optimization of deportation processes. It is argued that these measures result from a migration policy that combines securitization, economization, and false humanitarianism, with negative migrant selectivity at its core, evidenced in juridical-administrative practices and irregular entries of Venezuelan and Haitian citizens. Through three fundamental critiques—decisions not based on evidence, exceptional legal treatment, and governmental incapacity to coordinate a multilateral response—this work contends that the increase in irregularity since 2018 is not solely attributable to the Venezuelan crisis itself but also to the State's response to displacement over the past decade.

*Keywords:* 1. migration, 2. migration policy, 3. refuge, 4. deportation, 5. Venezuelan crisis.

#### RESUMEN

A través del análisis documental, este estudio cualitativo examina la respuesta de Chile a la crisis de migrantes y refugiados venezolanos, evaluando críticamente las medidas implementadas: exigencia de visas consulares, denegación de facto de refugio y optimización de los procesos de expulsión. Se argumenta que estas medidas obedecen a una política migratoria que amalgama securitismo, economicismo y falso humanitarismo, con la selectividad negativa de los migrantes como su núcleo, evidenciada en la práctica jurídico-administrativa y los ingresos irregulares al país de ciudadanos venezolanos y haitianos. A través de tres críticas fundamentales –decisiones sin base en la evidencia, tratamiento jurídico excepcional e incapacidad gubernamental para coordinar una respuesta multilateral–, este trabajo sostiene que el aumento de la irregularidad desde 2018 no se atribuye solo a la crisis venezolana, sino también a la respuesta estatal frente a los desplazamientos durante la última década.

*Palabras clave:* 1. migración, 2. política migratoria, 3. refugio, 4. expulsión, 5. crisis venezolana.

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INTRODUCTION<sup>3</sup>

International migration has increased substantially in recent years in Chile, doubling since the last census: if in 2017 there were 750 000 foreign residents (Instituto Nacional de Estadísticas [INE], 2018), the following year the estimate reached 1 300 005 people (INE & Servicio Nacional de Migraciones [SERMIG], 2023, p. 14), while in 2021 there were 1 482 390 foreigners (INE & SERMIG, 2022, p. 4), and 1 625 074 in 2022 (INE & SERMIG, 2023, p. 12). This sharp rise is explained by various factors, among which the Venezuelan exodus stands out, which has grown steadily in Chile since 2018: while in 2017 there were 83 045 Venezuelans in this country (INE, 2018), in 2018 they represented 26% of the total number of foreigners, and in 2021 an estimated 444 423 people were reported, equaling to 30% of foreigners (INE & SERMIG, 2022), a percentage that rose to 33% in 2022, with 532 715 Venezuelans in Chile (INE & SERMIG, 2023). Thus, from 2018 to 2022, the Venezuelan community was the migrant group that increased the most (56%) in Chile (INE & SERMIG, 2023, p. 18).

The Venezuelan flow constitutes the largest diaspora in the region, which makes it “a priority fact on the international agenda of the South Pacific subregion” (Gissi et al., 2020, p. 230). The data speaks for itself: as of August 2023, there were 7.7 million displaced Venezuelans in the world, of which more than 84% were in Latin America (5.5 million), the main receiving countries being Colombia (2.9 million), Peru (1.5 million), Brazil (477 000), Ecuador (478 000), and Chile (444 000) (Regional Interagency Coordination Platform for Refugees and Migrants of Venezuela [R4V], 2023).

The R4V platform characterizes the Venezuelan diaspora through the People in Need indicator, reaching 73% globally, as well as 59% in the case of Chile (R4V, 2022). These needs are associated with the deterioration of food security and access to health services, water, sanitation, and hygiene, and lack adequate accommodation and housing. Also, in recent years, mobility has grown complex due to the global COVID-19 pandemic, which has impacted the guarantees of migrants (Cociña-Cholaky, 2023; Servicio Jesuita a Migrantes [SJM], 2022; Freier & Vera, 2021; Liberona, 2020).

Similarly, in Chile, irregular migration has increased sharply, especially when compared to the speed of growth of regular flows (SJM, 2022). In the case of Venezuelans, if until 2018 their regular incoming amounted to 188 939 people, in 2021 it reached 29 880; in contrast, in Chile, reports of entry through unauthorized crossings grew from 2 905 in 2017 to 56 586 in 2021, the majority being Venezuelans (SJM, 2022). This scenario worsened especially in northern Chile, a vast and porous territory that borders Bolivia and Peru, through which thousands of foreigners have entered through unauthorized crossing points in recent years (Gissi & Andrade, 2022; Cociña-Cholaky & Andrade-Moreno, 2021). Thus, according to the latest published estimate, in 2022 Venezuelans represented 66% of the foreign population in irregular situation in Chile, having

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gone from 1 072 people in 2018 to 70 647 in 2022; that is, their irregularity grew 6 490% in relative terms (INE & SERMIG, 2023, p. 20).

This increase in migratory irregularity caused a response from the Chilean State, which will be examined based on the measures adopted and their consequences. The hypothesis put forward is that such an increase, particularly in the Venezuelan diaspora, cannot be attributed solely to the phenomenon of the exodus itself. Rather, it is argued that the complexity of the situation lies in the management of mobility by the Chilean State over the last decade, with a particular focus on the policies passed that have hindered the regular entry and stay of certain migrant groups. The notion is forwarded that these government policies and practices have played a crucial role in creating and exacerbating irregularity, and have contributed to the current migration situation in Chile.

A humanitarian crisis is different from a migration crisis (Dumont & Scarpetta, 2015; Devereux, 2017; Gandini et al., 2019), although both can be intertwined, since displacements can exacerbate conditions of vulnerability and create additional humanitarian needs. It is therefore problematic to conceptualize the increase in Venezuelans as a humanitarian crisis, since that would indicate an exceptional situation unprecedented in the recent history of the region, which would entail discursive effects. However, the Organization of American States (OAS, 2021) and the United Nations (R4V, 2022) have described it as such, due to the profound deterioration of the political, economic, and social conditions affecting Venezuela, which has produced a serious crisis whose most palpable consequence is the massive exodus of its population.

Now, the Chilean response has been implemented through a securitization and selective immigration policy, accentuated since 2018 by a series of administrative measures that have contributed to the rise in irregularity: the period between 2018 and 2021 concentrated 88% of the complaints for entry through unauthorized crossing points (SJM, 2022). Thus, according to the latest estimate, the number of irregular foreigners in Chile increased from 7 213 in 2018 to 107 223 in 2022 (INE & SERMIG, 2023, p. 19); that is, irregularity increased more than 14 times in that four-year period.

Based on the above, this work is divided into four sections: in the first part, key concepts and distinctions of Chilean immigration policy are defined. In the second, the institutional context that made the implementation of a selective policy possible is briefly examined. In the third section, the crisis is conceptualized and the policies implemented since 2018 are detailed, the main axes of which have been: consular visa requirements, de facto denial of asylum, and optimization of deportation. In the last section, criticisms are formulated of how the Chilean State has configured its immigration policy and faced the crisis.

## METHODOLOGY

This article makes use of the qualitative methodological approach, specifically documentary analysis, through critical reflection, by examining bibliography, regulations, policies, statistics, legal initiatives, and other texts. This methodology does not necessarily require “researching with other subjects” and assumes that “most of the research work consists of the analysis of texts and other documents” (Hudson, 2011, p. 330).

In a first exploratory stage, based on the prior conceptualization of migration policy (Andrade, 2022; Cociña-Cholaky, 2022c), an analysis was carried out of the current regulations on migration and foreigners in Chile, and of the specialized literature and reports.<sup>4</sup> The bibliographic review focused on publications on Chilean migration policy corresponding to the last decade. Thus, it was possible to identify its various theoretical models, which then allowed to characterize the measures adopted in the country in the last decade in its specific political context.

In a second, analytical stage, this characterization was complemented with a descriptive statistical examination of the material provided by official agencies:<sup>5</sup> consular visas required of foreign persons (requested, granted, and denied), complaints for entry through unauthorized crossing points (differentiating by nationality), and requests for refuge (formalized, denied, and refugee status granted), which showed various trends that correlated with milestones within the implementation of the migration policy.

Based on these findings, it is analyzed how the increase in migration in Chile in the last decade has been addressed, based on an ambivalent policy that brings together economic and security elements, and how these allow us to characterize the response to the crisis. Based on this, three criticisms of the management are made: decision-making that is not evidence-based or following the recommendations of specialized organizations, legal treatment from an exception perspective, and the inability to promote a multilateral response.

## CONCEPTS AND MODELS OF MIGRATION POLICY

Two meanings of the expression *migration policy* can be identified: the descriptive or sociological one, and the normative or legal one (Andrade, 2022). The sociological sense understands it in general as “the relationship between the State and migration” (Domenech & Gil, 2016, p. 176). Since States lawfully condition the rights of migrants (Andrade, 2023), migration policy is

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<sup>4</sup> As an example, see Comptroller General of the Republic, 2019; Universidad de Chile, 2016; Lawson and Rodríguez, 2016; Gutiérrez and Charles, 2019; Saavedra, 2020; Vargas, 2018; Vargas and Canessa, 2021; and R4V, 2022.

<sup>5</sup> This information comes from SERMIG statistics available on its institutional website. In addition, requests for access to public information were made, according to Transparency Law No. 20,285, to the Policía de Investigaciones (PDI) (Chilean Investigative Police), the Undersecretariat of Foreign Relations, and SERMIG.

conceived as “a system of conditionalities to access rights and, at the same time, the set of mechanisms that induce overcoming that conditionality” (Thayer, 2019, p. 17).

In order to understand what this system of conditionalities implies, the three major models of migration policy must be elucidated (Mármora, 2010; Domenech, 2017; Concha, 2018; Oyarzún et al., 2021; Andrade, 2022):

1) Securitization and control model: understands irregular migration as a threat to public order and national security, together with terrorism, drug trafficking, and human trafficking (Brandariz et al., 2018; Brower, 2021). From this perspective, States pursue certain collective ends, such as security, public order, and prevention of transnational crimes, which in principle would justify the restriction of certain guarantees to migrants, and even the criminalization of irregularity (Rivera et al., 2023). This approach equates free mobility with a threat to State stability.

2) Economization or shared benefits model: focuses on managing the benefits of migration, dichotomously distinguishing between desirable and undesirable migrants: the *good* and the *bad* migrant. Migrants are thus understood as fundamentally economic subjects (Gómez & Malo, 2020; Clavijo et al., 2023), individuals who would only decide to migrate after making a rational economic calculation (Domínguez & Vásquez, 2020). Thus, the State would also make the same calculation: selecting who to admit, preferring those who have economic resources, or who excel at the professional, cultural, and/or sports level, or who are willing to do unskilled work; and making it difficult to entry, on the contrary, to those who do not qualify in these categories or are in a vulnerable situation. This filter is justified on the premise of the common good, preventing the migrant from becoming a burden on society.

3) Human rights or human development for migration model: seeks to transform the attitude and response of States towards human mobility, by dissolving the distinction between national and foreign, and recognizing migrants as full subjects of rights, which protect them in the States of origin, transit, and destination (Pavez-Soto & Colomé, 2018). This approach aims at acknowledging the human right to migrate, for which an international agenda must be promoted that advocates the establishment of global citizenship (Feddersen et al., 2022; Andrade, 2022; Andrade, 2023).

States usually oscillate between the first and second models, often intertwined, and even under coexisting processes of securitization and humanitarianization (Cociña-Cholaky, 2022c; Pereira & Clavijo, 2022). The third model is rather a desideratum on how the international community should be formed under the rule of human rights and global justice (Andrade, 2022). Therefore, rather than adopting a genuine human rights perspective, States tend to make rhetorical use of these and of the humanitarian discourse, emptying it of meaning so as to establish a migration governance (Stang, 2022) that strengthens the securitization model, or that is functional from an economic perspective (Domenech, 2018; 2017; Gil & Santi, 2019; Stang et al., 2020; Andrade, 2022).

Migration policy is equivalent to a system of conditionalities for accessing rights (Thayer, 2021), since these are subordinated to the security and control purposes that States pursue and/or

to the economic interests of political-business elites eager for cheap labor (Campesi, 2012; Calavita, 2005).

On the other hand, the concept of *migration policy* can also be used in a normative or legal sense (Andrade, 2022). In this sense, the Inter-American Court of Human Rights (IACHR) has held that the “The migratory policy of a State includes any institutional act, measure or omission (laws, decrees, resolutions, directives, administrative acts, etc.) that refers to the entry, departure or residence of national or foreign persons in its territory” (OC-18/03, §163).<sup>6</sup>

Hence, understanding such a concept involves questioning both senses when seeking to identify which models predominate in the institutionality (descriptive), as well as the set of norms by which the behavior of the recipients is regulated (normative), especially the guidelines, purposes, or principles that guide the actions of officials (Andrade, 2022). In this case, the particular migration policy may be implicit, that is, its purposes or objectives may configure a practice based on conceptions different from the purposes or objectives current at the time (Pavez-Soto & Colomé, 2018).

Thus, the convergence of both perspectives is required to understand the migration institutionality of the State. The descriptive and normative senses allow to understand two central questions about the State's response to this phenomenon: 1) what are the institutional reasons that explain the precarious legal status of people who move? That is, the restricted catalogue of rights subject to deadlines and conditions that turns migrants de jure into second-class citizens (Thayer et al., 2016; Thayer, 2019 and 2021); and 2) how does the State articulate its response to human mobility? Namely, not only through institutions established by its legislation, but also through the way in which institutions are used to achieve certain collective ends that depend on the way in which the migrant and the phenomenon itself are conceived. This second question is the one that will be explored below.

#### CHILEAN MIGRATION INSTITUTIONALITY

The increase in the migrant population in Chile and the Venezuelan diaspora have revealed several deficiencies in Chilean migration institutions; summarized in: 1) an anomalous, outdated legislation (Decree Law 1094 of 1975, and its regulations),<sup>7</sup> incapable of protecting the rights of migrants; and 2) an eminently securitist migration policy (Lawson & Rodríguez, 2016; Stang, 2016; Durán & Thayer, 2017; Brandariz et al., 2018; Andrade, 2020; Díaz, 2020).

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<sup>6</sup> The IACHR stated: “although States enjoy a margin of discretion when determining their immigration policies, the goals of such policies should take into account respect for the human rights of migrants” (Vélez Looz v. Panama case, 2010, §97; OC-21/14, §39). For an analysis of the human rights standards on the matter in the inter-American system and their application in Chile, see Díaz, 2020 and 2021.

<sup>7</sup> Decree Law No. 1094 (07/19/1975), Ministry of the Interior, establishes regulations on foreigners in Chile; and Supreme Decree No. 597 (11/24/1984), Ministry of the Interior, passes new immigration regulations.

The migration law in force at the beginning of the crisis was Decree Law 1094 (DL), approved in 1975 by the Military Junta; a regulation alien to the Rule of Law, imbued with the National Security Doctrine, with a wide margin of discretion (Cociña-Cholaky, 2022a, pp. 193-194) and restrictive of the rights of migrants (Universidad de Chile, 2016, p. 101).

First, Article 13 of DL 1094 set forth that residence permits would be granted based on “the convenience or utility that brought to the country.” These criteria, established through “indeterminate legal concepts,” turned the application of administrative discretion itself into a factor in the violation of rights (Bassa & Torres, 2021, p. 1040).

The above explains the broad discretion with which the Ministry of the Interior implemented migration law in the last decade when granting of visas, extensions, and permanent stays (Trabalón, 2018). For this reason, the Constitutional Court declared article 13 of DL 1094 inapplicable, as it was *pre-constitutional*, having been adopted without fundamental rights criteria, and *pre-conventional*, as it did not meet minimum human rights standards (Tribunal Constitucional, 2013a; 2013b).

Secondly, regarding the expulsion of foreigners, DL 1094 was a mixed system: administrative and juridical (Lawson & Rodríguez, 2016; Andrade, 2020; Cociña-Cholaky, 2022a). The administrative regulation of this measure violated several guarantees: 1) it lacked an established and objective administrative process, and set a very short period for administrative claims;<sup>8</sup> 2) during the resolution of the appeal, the foreigner could be under police custody, a measure decreed by the administration and not by a court of justice; 3) the discretionary decision of the authority was not limited by considerations such as family ties or vulnerability, the courts developing said criteria;<sup>9</sup> and, as noted, 4) it granted a wide margin of discretion to the administration.

Due to the above, the only way to protect the rights of foreigners in the event of expulsion was to file an appeal for protection (or *habeas corpus*), which had to be exercised in one of the Courts of Appeal (Vargas, 2018; Gutiérrez & Charles, 2019; Bassa & Torres, 2021).

As for expulsion for juridical reasons, DL 1094 criminalized irregular migration by accounting for two special types of crimes: entering or leaving the country with documents that were falsified, manipulated, or issued in another person’s name (article 68), or clandestinely (article 69), in which case, once the sentence had been served, expulsion was required. However, deportations due to convictions for these crimes have declined in the last decade (Cociña-Cholaky, 2022a; SJM, 2022).

The second deficiency is that the securitist migration policy is framed within the context and ideology that underpins DL 1094: the Cold War and the National Security Doctrine (Stang, 2016; Durán & Thayer, 2017; Concha, 2018; Brower, 2021). This framework gives an unmistakably

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<sup>8</sup> The appeal had to be filed within 24 hours before the Supreme Court, located in the capital (article 89 of DL 1094).

<sup>9</sup> For this reason, since 2017, the Supreme Court has developed criteria to control and limit the discretion of the administration when decreeing expulsions (Andrade, 2020; Cruz, 2018; Suprema Corte, 2019).

securitist sense to this regulation. Its purpose was to allow the Military Junta to expel foreigners sympathetic to Allende, and prevent the return of exiled Chileans, many of whom were denationalized (Andrade, 2022).

With the transition to democracy, a series of reforms slowly adapted the legislation to democratic and human rights standards. However, DL 1094 remained practically unchanged for more than 45 years, making it the oldest immigration regulation in Latin America until the enactment of Law 21 325 on Migration and Foreigners of 2021 (LME), in force since February 2022. Its validity was deferred due to the lack of consensus on the regulatory standards for its implementation.

For this reason, the migration crisis made even more evident the need for new regulations from a human rights approach, that limited the administration's discretion in granting permits, and provided effective judicial protection to migrants (Oyarzún et al., 2021). In this sense, one of the improvements of the LME is the new expulsion procedure (article 126 et seq.), adjusted to due process and granting effective remedies (article 136 et seq.). In addition, the LME created the Migration Policy Council (articles 159 to 164), establishing various elements for the definition of the national migration and foreign policy (articles 22 and 23). In this regard, the LME adopted a rights perspective (articles 3 and 13 to 21). It also introduced limitations and institutions that restrict the full enjoyment and exercise of migrant rights: it acknowledged partial ownership of rights and conditioned social rights (articles 3 paragraph 6, 16 paragraph 2, and 17 paragraph 1) (Andrade, 2022). In addition, the Immigration Policies in Comparison index shows that the LME has a protective, restrictive, and securitist approach to national sovereignty (Vásquez et al., 2021).

In July 2023, the Migration Policy Council proposed to the president the new *Política Nacional de Migración y Extranjería* (PNME) (National Immigration and Naturalization Policy), which includes a series of measures, some of immediate application, such as the biometric registration of irregular migrants and the creation of an Inter-institutional Committee for the materialization of expulsions; others, of a legislative nature, such as the expansion of grounds for expulsion and prohibition of entry associated with security reasons; and specific measures against irregularity, to rule out a massive regularization process and provide guidelines for the granting of residence permits associated with employment contracts in branches that are difficult to cover or where there is a shortage of workers (Gobierno de Chile, 2023).

Thus, the LME and the PNME persist in a securitist and economic approach to mobility, which conditions access to rights and depends on the way in which the State conceptualizes the migrant and migration, based on the models described above. These institutional shortcomings have determined the response to the Venezuelan crisis.



MEASURES ADOPTED BY THE CHILEAN GOVERNMENT  
FROM 2018 TO 2022

The specialized literature is divided regarding the use of the concept of crisis applied to migratory contexts, since, if mobility is an ordinary phenomenon within human populations, understanding it in terms of a crisis supposes the use of a disruptive category for a reality that is otherwise perceived as normal but has undergone an abrupt change, and so this anomaly would justify a specific response that enables the use of exceptional measures (Ávalos & Celecia, 2020; Cantat, 2020; Menjívar et al., 2019). On the other hand, there are approaches to migrations in contexts of crisis, where attempts are made to describe, through certain conditions or states of affairs that must occur, a certain panorama where it is possible to speak of a crisis. This framework is made up of elements that are articulated under “causal, geographic, temporal, and vulnerability” parameters (Martin et al., 2013, p. 126).

In the Venezuelan case, the context could be understood as a crisis, given the presence of the following factors: “the diversification of migratory destinations beyond border destinations”; “the collapse of the administrative system in charge of issuing the necessary documentation for migration”; “the emergence and consolidation of corruption networks”; a transition from a migrant profile of minor to greater vulnerability; the emergence of new migratory routes by different means of transport; and challenges associated with addressing a migrant flow that flees a context of severe dissatisfaction of basic needs (Gandini et al., 2019, pp. 11-12).

The Chilean government adopted a series of administrative measures first announced in 2018. What was new was not the emphasis on efficient management, since the objective of an orderly, safe, and regular migration had also been adopted by previous governments (Andrade, 2022);<sup>10</sup> what was new was the requirement for specific groups of foreigners, which established a differential management of mobility.

Among the measures of the Minute, the following stand out: “The processing of the Migration and Immigration Bill” (the current LME); “Simple Consular Tourist Visa for Haitian and Venezuelan citizens”; “Democratic Responsibility Visa for Venezuelan citizens”; “Online Appointment Reservation System”; “Humanitarian plan for an orderly return of foreigners” (Andrade, 2020, pp. 89-90).

Several of these measures were created for two groups: Haitians and Venezuelans. Thus, the *humanitarian plan*, although established for any foreigner, was applied almost exclusively to Haitians (Andrade, 2020; Stang et al., 2020). In turn, the visa requirement made the regular entry of these communities difficult, due to the tourist overstay (SJM, 2022), in which foreigners who entered regularly incurred, since DL 1094 allowed changing from tourist to resident category as long as they found a job (article 49). These measures were in force when the Venezuelan crisis worsened in 2019. Faced with the enormous difficulties for Venezuelans to obtain the

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<sup>10</sup> Similar measures were adopted in other countries in the region, see Domenech, 2020; 2017; Finn et al., 2019; Stang et al., 2020.

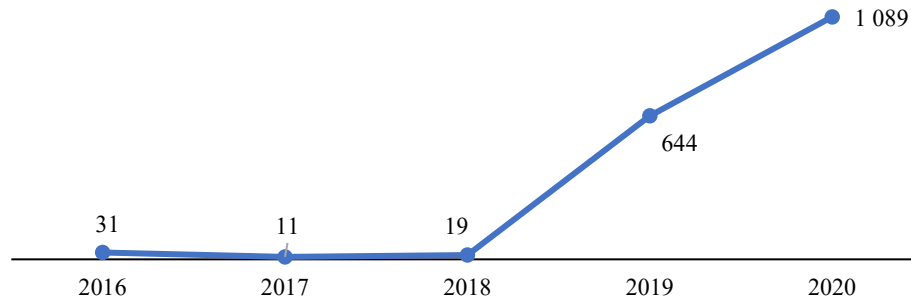
documentation required for the visa, reports of entry through unauthorized crossing points skyrocketed.

The impacts of these policies are explained below.

### *Requirement of Consular Visas for Certain Groups of Foreigners*

The imposition of consular visas, instead of facilitating the inclusion of the migrant population in Chile—which was one of its declared purposes—has made their regularization difficult, since the communities to which they were imposed were those that most increased the reports of entries through unauthorized crossing points, as shown in the figures in Graph 1 (which account for the years before and after the imposition of the visa requirement):

Graph 1. Reports of Haitians Entering through Unauthorized Crossing Points

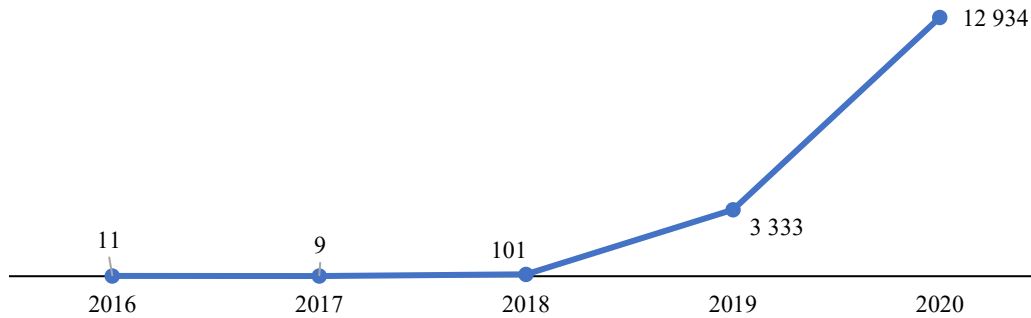


Source: Elaborated by the authors based on data from the PDI (2021).

In 2018, Haitians were required a consular tourist visa and, in 2019, their reports of entry through unauthorized crossing points increased more than 33 times. This significant increase is consistent with the fact that in the last decade the Chilean State has not recognized any Haitian as a refugee (Rojas Pedemonte et al., 2015, p. 224), despite the fact that in the period from 2010 to 2021 the SERMIG registered more than one hundred formalized asylum applications from Haitians (SERMIG, 2022). This contrasts with the deep political, social, and economic crises that Haiti has faced in recent decades (Cociña-Cholaky, 2022b).

As for Venezuelans, in 2018, the Chilean government required from them a consular visa of democratic responsibility in order for them to stay in the country, and, in 2019, a consular tourist visa, which has made their regularization difficult, given how scarcely this visa is granted, how time-consuming and complex it is to obtain it, and the delays in its issuance (Cociña-Cholaky & Andrade-Moreno, 2021).

Graph 2. Reports of Venezuelans Entering through Unauthorized Crossing Points 2016-2020

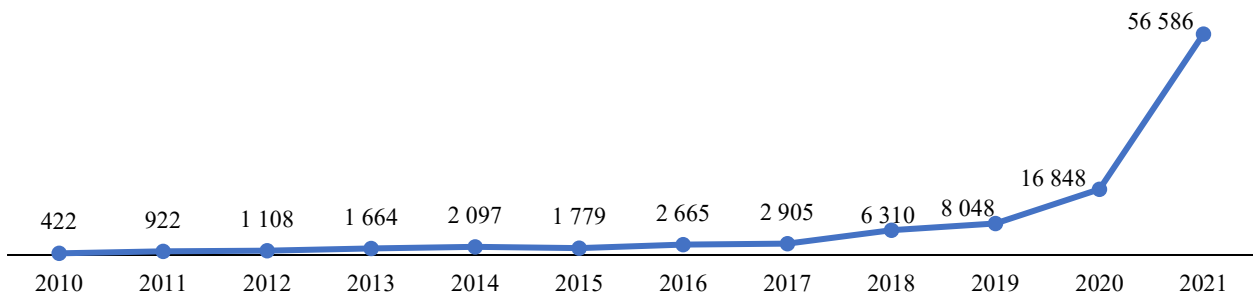


Source: Elaborated by the authors based on data from the PDI (2021).

As shown in Graph 2, reports of clandestine entry of Venezuelans increased more than 128 times from 2018 to 2020. Therefore, not only has the closure of borders due to COVID-19 increased irregularity, but also various measures adopted, such as consular visas, have made their regular stay difficult, as have also made difficult the inclusion of Haitians and Venezuelans, due to the fact that they involve extensive processing, in addition to the fact that the issuing of these visas as paused during the pandemic, evidenced in how few of them were granted as of June 2021: 14% for democratic responsibility visas, 12% for tourist visas for Venezuelans, and 12% for tourist visas for Haitians (SJM, 2022).

In such way, the State contributes to create that status of irregularity by establishing additional requirements that condition the enjoyment of rights for the migrant population (De Genova & Peutz, 2010; Valencia & Ramos, 2021), making “the way of migrating more precarious and vulnerable: thus, between January 2018 and January 2021 alone, there were more than 35,400 entries through unauthorized crossing points” (SJM, 2021, p. 5). If the State restricts or closes the routes to enter, migrants will look for alternatives that end up being more dangerous, such as the so-called going-round practices (Haesbaert, 2016), especially on the northern Chilean border. This can be seen in the explosion of reports of entries through unauthorized crossing points (Graph 3).

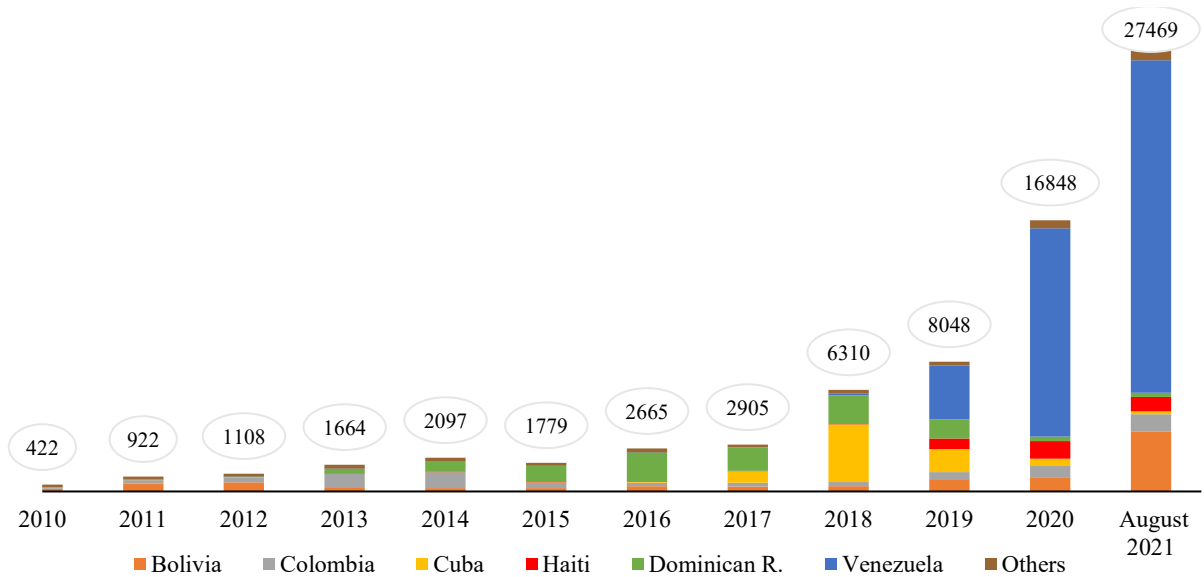
Graph 3. Total Number of Reports of Entries into Chile through Unauthorized Crossing Points, 2010-2021



Source: PDI (2022).

As can be seen, reports of irregular entries have increased, particularly in recent years: from 2017 to 2018 they doubled; in 2019 they exceeded 8 000; in 2020 they doubled again, and in 2021 they tripled. The Venezuelan group stands out in these reports, which in 2021 represented 77% of the total. Graph 4 presents the panorama of the last decade, contrasting the reports by nationality of the foreigners.

Graph 4. Reports of Entries into Chile through Unauthorized Crossing Points, by Nationality, 2010-2021



Source: PDI (2022).

As shown, the Venezuelan group predominates in recent years in terms of clandestine entries. This boom is largely due to the difficulty of entering through regular channels, subject to the imposition of visas, and to the fact that in March 2020 the closure of land borders was decreed, which extended until March 31, 2022, without special measures for forced mobility having been implemented.

### *De Facto Denial of Refuge*

To analyze how the State of Chile has addressed refuge in recent decades, it is essential to consider at least three aspects: current regulations, available statistics, and the evidence provided in specialized literature.

Regarding regulations, Chile has robust legislation on refuge, both at the domestic and international levels (Convention on the Status of Refugees of 1951, and its Protocol of 1967). At the domestic level, Law 20 430 of 2010 on refugee protection stands out, which enshrines a series of principles: non-refoulement, including the prohibition of entry at the border (article 4); no sanction for irregular entry (article 5); no discrimination (article 8); and family reunification

(article 9).<sup>11</sup> Also, in 2018 the Chilean State ratified the Refugee Protection Pact, which establishes the principle of non-refoulement, aiming at comprehensive protection (articles 3, 4, and 5).

However, despite the important normative established in force, the Refuge Law is not being adequately applied (Cociña-Cholaky, 2022b). If the figures are examined, in the last decade and until 2021, Chile had granted refuge to 701 people, despite the fact that during that period a total of 21 847 applications had been formalized. In fact, despite the increase in these formalized refugee applications, the granting rate from 2010 to 2020 did not exceed 3%.

The small number of refugee applications approved is worrying, particularly in recent years. For example, in 2020 only seven people were granted refugee status, although 1 629 applications were formalized; that is, recognition did not exceed 0.5%, a low percentage taking into account that the Venezuelan exodus is part of a forced displacement. In this regard, the Inter-American Commission on Human Rights in its Resolution 2/18 has underlined the need for countries to enable the recognition of Venezuelans as refugees. However, despite the recommendations of this and other international organizations such as the OAS, in Chile refuge as a humanitarian protection mechanism is almost non-existent (Cociña-Cholaky, 2022b).

In this same country, various obstacles to accessing the refuge process have been identified, such as requiring self-reporting, pre-admissibility interview, requirement of additional documents, and discretion (Liberona & López 2018; Pascual, 2020; Cociña-Cholaky, 2022b). Likewise, since 2018, there has been a trend to require self-reporting to access the refugee status recognition procedure (Gutiérrez & Charles, 2019; Vargas & Canessa, 2021), which is why the authority has made it a requirement to receive humanitarian aid (Cociña-Cholaky & Dufraix-Tapia, 2021). Along these lines, recent reports reveal multiple obstacles in the refuge procedure that restrict humanitarian protection to the population in the context of forced mobility (Contraloría General de la República, 2019; Gutiérrez & Charles, 2019; Vargas & Canessa, 2021).

### *Optimizing Expulsion Processes*

Although in Chile the administrative and juridical expulsion regimes coexisted, most expulsions nowadays take place through juridical proceedings (Cociña-Cholaky, 2022a; SJM, 2022; Thayer et al., 2020), which is partly a consequence of a doctrine adopted by the Supreme Court since 2017, which prevents administrative expulsion if the criminal action has been withdrawn (Suprema Corte, 2019; Andrade, 2020). The purpose of this doctrine was to restrict a legal practice undertaken since the beginning of the previous decade, and that sought to replace the juridical expulsion process (which is highly evidence-dependent) with administrative expulsion, towards which the courts were more deferential (Cruz, 2018; Vargas, 2018; Suprema Corte, 2019; Andrade, 2020).<sup>12</sup>

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<sup>11</sup> For an analysis of this Law see Cociña-Cholaky and Dufraix-Tapia, 2021.

<sup>12</sup> Doctrine that applies only to the special crimes of DL 1094, that is, clandestine entry or with falsified or manipulated documents.

Table 1 shows the figures for expulsion orders and expulsions of foreigners from 2012 to 2021:

Table 1. Expulsion Orders and Executed Expulsions, Chile, 2012-2021

		2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
<b>Expulsion orders</b>	Administrative	2 067	2 463	2 180	2 536	2 951	3 307	6 702	3 963	6 889	
	Juridical	345	661	2 180	905	1 551	1 788	1 743	1 222	755	
	Total	2 268	2 412	3 124	3 215	3 441	4 502	5 095	8 445	5 185	7 644
<b>Executed expulsions</b>	Administrative	1 053	1 056	929	599	978	302	576	202	246	
	Juridical	122	299	929	318	420	1 750	1 656	1 268	667	
	Total	1 021	1 175	1 355	1 341	318	1 398	2 052	2 232	1 470	913

Source: SJM (2022).

There are three times more administrative expulsion orders (33 058) than juridical ones (10 005) in the last decade; there were almost a thousand more juridical expulsions (6 912) than administrative deportations executed (5 941), and three times as many expulsion orders (43 063) than actual expulsions (12 853). Two important trends were observed in the period analyzed: the sustained increase in administrative expulsion orders and the preponderance of actual juridical expulsions over administrative deportations.

Increasing the administrative orders issued, but carrying out more juridical expulsions, constitutes a trend towards optimization, since the State prioritizes carrying out the deportation of those foreigners under juridical control. This is achieved by resorting to criminal records, since, during the juridical control of the administrative expulsion order through the appeal for protection, the Supreme Court considers that having such records constitutes an exception to the exit ban (Andrade, 2020). Without such criminal record, the Court would grant the appeal for protection, taking the first step to validate the stay of migrants in Chile.

The great difference between the expulsion orders decreed versus the expulsions carried out is explained as a government strategy that seeks to enable an indirect regularization mechanism for migrants under irregular situations, without the government in power having to assume the political cost of carrying out a massive regularization process. As a matter of fact, the filing of the appeal for protection is the only means that enables the regularization of foreigners in Chile. This exceptional administrative-juridical mechanism works as follows: against the expulsion decree, the migrant may file an appeal for protection; if the migrant obtains a favorable ruling from the Court that invalidates the expulsion process, the foreigner may then file a petition before the Undersecretary of the Interior, based on article 155 No. 8 of the LME, requesting authorization to undergo regularization. According to the law, with this authorization, the migrant can apply for a visa.

The protection ruling will not suffice for the migrant to stay, but must again request the Administration to grant the authorization and visa, a procedure that takes several months and even years; in the meantime, his irregularity continues. Therefore, this exceptional administrative-juridical mechanism of regularization entails vulnerability and conditionality of migrant rights.

CRITIQUE OF CHILEAN MIGRATION POLICY  
IN RECENT DECADES (2000-2023)

If the increase in Venezuelan flows is classified as a crisis, it turns out that whatever Chilean migration policy may have been in force, it would have been incapable of providing an adequate response. This would precisely justify an exceptional treatment of such a crisis, since it would be an abnormal displacement for which migration policy was not designed in the first place, so it was necessary to generate *ad hoc* solutions. However, a rigorous analysis of the measures adopted, based on the characterization of its policy, reveals that the Chilean government applied solutions that had already been taking shape at least since 2010, based on securitist and economic models.

The imposition of consular visas made it difficult for certain groups of foreigners to enter and stay under regular status; the presence in the country of these groups was perceived by the authorities as excessive: “an unavoidable reality,” given that “their stay in Chile beyond the time provided for tourists” exposed them (the migrants) and their families “to being the target of human trafficking networks and other risks derived from their irregular situation in the country” (paragraph 3 of Decree 776 of the Ministry of the Interior and Public Security of 2018) or “to be the target of violations derived from their irregular situation in the country” (paragraph 6 of Decree 776 of the Ministry of the Interior and Public Security of 2018). The above represents a case of negative selectivity; that is, the policy did not seek to attract foreigners who were outstanding professionals, investors, researchers, or qualified labor, but, on the contrary, discouraged the arrival of certain migrant communities.

Until 2019, most Haitians and Venezuelans had entered Chile as tourists, so the decrees that imposed visas on them were issued when DL 1094 was still in force, whose article 49 allowed tourists to change their status to that of residents, which the current LME does not allow. Thus, the main reason for requiring these visas was not the potential irregularity, but simply the significant increase in these groups in Chile.

The undesired effect produced by these negative selectivity measures was the sharp increase in reports of unauthorized crossings of these nationalities. As such, a selective control measure resulted in an increase in irregularity of those whose entry and stay in the country was sought to be made difficult. A differential management of mobility was carried out in this case, for which the actions of the Administration were guided by the establishment of strict border control measures with respect to certain groups. However, this policy failed twice: not only because it could not be selective in a negative sense, but also because it increased irregularity instead of decreasing it. Ergo, it was the Chilean State itself that contributed to creating irregularity.

As for the *de facto* denial of refuge, unlike visas that could enjoy a patina of legality, it bears the weight of illegality. The evidence for this is overwhelming, not only because the figures show that the State of Chile practically does not grant refuge, but also because, as research by the Contraloría General de la República (2019) and reports on human rights since 2017 have shown (Gutiérrez & Charles, 2019), the migration policy was aimed at directing the actions of officials to hinder or discourage the acknowledgement of refuge. The imposition of additional requirements by the

administration to acknowledge it shows a conception based on exceptionality: officials, with the purpose of fulfilling certain ends that are considered appropriate for the common good of society, based on implicit concepts and parallel to the objectives explicitly adopted and recognized in the Law, act not in accordance with the Law and place themselves outside the law, transforming the exception into the rule.

Lastly, with regard to the optimization of expulsion processes, it is clear how the Chilean government's preference to deport in terms of juridical rather than administratively is linked to the issuance of more administrative expulsion orders than the execution of actual deportations. This shows an institutional tension that simultaneously seeks to expel those who are easiest to expel (migrants who are in the custody of the State), while opening an indirect path of regularization for foreigners under irregular status.

Thus, the State aims at balancing or equilibrate contradictory social demands and interests: on the one hand, it seeks to satisfy public opinion, with the adoption of measures framed under the slogan "orderly, safe, and regular migration," and, on the other, seeks to manage the contribution of irregular foreigners as cheap labor, by allowing them to regularize their status through juridical means, while they work precariously and increase the profit of the employers, without explicitly adopting any extraordinary regularization plan due to the political costs that doing so would imply. These features, which have outlined Chilean policy in recent years, follow migration policy models that are intertwined and complex: a combination of securitization, economization, and false humanitarianism. A policy that is in tune with the management of other receiving States in the region (Oyarzún et al., 2021, p. 102), configuring a policy with elements of regressiveness, exclusivity, and temporality.

Based on the above, three critiques of the way in which the Chilean State has managed this issue are presented next.

### *Decision-Making Not Based on Evidence*

The decisions made have ignored evidence and the recommendations of experts. It has been assumed that by imposing more entry requirements, displacement will decrease or slowdown, which fails to address the complexity of the migration phenomenon, since more barriers will not stop mobility, it will continue, only becoming precarious (Hollifield et al., 2014; Pécoud & de Guchteneire, 2005), especially if it involves a population in a context of forced mobility, such as the Venezuelan exodus (Cociña-Cholaky, 2022b).

Regarding programs implemented in Chile, the 2011 Northern Border Plan and the 2019 Secure Border Plan stand out, characterized by a constant lack of coordination between the government agencies involved (Ramos & Ovando, 2016; Pavez-Soto & Colomé, 2018; Cociña-Cholaky, 2022c). These plans were aimed at strengthening the northern border with control measures aimed at combating human trafficking, drug trafficking, and other cross-border crimes, based on the imaginary of *teichopolitics* (Ramos & Ovando, 2016), that is, on the policy of a real or symbolic



border walling off. Such a strategy has proven ineffective in containing the irregular migration that erupted from 2018 onwards. Thereafter, in 2021, the Colchane Plan was implemented, named after the northern border town of Colchane, which became the epicenter of migratory pressure, mainly Venezuelan. This plan aimed, among other things, at controlling irregularities, which, given the high number of reports of entry through unauthorized crossing points, was proven poorly effective (Cociña-Cholaky & Andrade-Moreno, 2021; Cociña-Cholaky, 2022c).

The lack of evidence also extends to the design of public policies for foreigners living in the country, since the Chilean State has little or deficient statistical information on this population, which has been noted by the Committee of Migrant Workers (CMW/C/CHL/CO/2 of 2021) and the Report of the Special Rapporteur on the human rights of migrants (A/77/189 of 2022).

### *Exceptional Legal Treatment of Mobility*

The Chilean government has adopted exceptional measures since 2018 when addressing migrant flows, which occurred, for example, with the so-called Humanitarian Plan for Orderly Return (established in Exempt Resolution 5 744 of 2018 of the Ministerio del Interior y Seguridad Pública), which had expulsion rather than humanitarian aims, was selective with respect to the Haitian population, and imported a limitation on the rights of migrants through an exempt decree, prohibiting them from returning to Chile for nine years (Andrade, 2020). These measures also include the aforementioned Colchane Plan, which has been linked to collective expulsions through an analysis of the expulsion orders issued by the Tarapacá Municipality (Jiménez, 2021, p. 418), showing that all the elements required by international human rights standards can be found in said expulsions (Jiménez, 2021, pp. 419-422). It should be noted that DL 1094 was in force, by which the reserve of actions granted to those expelled in the decree was to the action set in article 89 (Jiménez, 2021, p. 422), which, as stated, is not an effective remedy nor does it meet due process standards.

The Chilean government has continued along this path of militarization and exceptionalism. Thus, the intervention of the Armed Forces in the border zone has been authorized, not through a law processed in parliament, but through Decree 265 of 2019 of the Ministry of Defense. In addition, its validity was temporarily extended, which was observed by the Comptroller General. In February 2021, also by means of a decree, the collaboration of the Armed Forces with civil and police authorities in northern Chile was authorized, which expanded the intervention to combat illicit migrant trafficking by materially extending the original authorization of Decree 265, which only accounted for the fight against drug trafficking and transnational organized crime (Cociña-Cholaky & Andrade-Moreno, 2021).

The state's response to the increase in irregularity has been to govern mobility, which has transformed exceptionality into a rule (Campesi, 2012) and has configured a policy based on an understanding of migration from an exceptional and restrictive approach.

*Incapacity to Promote or Coordinate A Multilateral Response to Migration*

It is not easy to explain why Chile, having the best economic and institutional indices in the region, has not been able to promote and lead a multilateral response to face the Venezuelan migration crisis. The Chilean administration continues to conceptualize displacement from a sovereignist perspective, and insists on addressing one of the most urgent global problems of the 21<sup>st</sup> century from the narrow perspective of the nation-State (Cociña-Cholaky & Andrade-Moreno, 2021).

As noted, the securitist approach, which is essentially sovereignist, is the result of the national security doctrine adopted during the Dictatorship; this, together with the dictatorial nature of the government, serious human rights violations, neoliberal economic reforms, and the Cold War context, transformed Chilean foreign policy, which paused or eliminated the sustained regional integration efforts prior to the Dictatorship (González, 2019; Fuentes, 2016; Wilhelmy & Durán, 2003). With the return to democracy, international isolation was overcome and Chile reintegrated into the world through free trade. However, the approach to foreign policy from a democratic deficit was established, in which a high level of secrecy, the influence of power groups, and a lack of transparency and accountability to citizens is noticeable (Fuentes, 2016).

At the same time, migration policy initiated a process of multilateralization in the late 1990s (Andrade, 2022), following the same path as foreign policy (Navarrete, 2017), as evidenced by its main milestones: participation in the South American Migration Conference, entry into MERCOSUR and the Pacific Alliance, adoption of the 2030 Agenda and negotiation of the Global Compact for Migration (Andrade, 2022). In none of these processes did citizens have participation or influence.

The success of Chilean trade policy led to the development of a foreign policy reflecting the self-perception of a kind of national superiority or exceptionalism, which has produced a relative regional isolationism that favors sovereignty and an open, but one-dimensional regionalism, emphasizing trade relations over multidimensional regional integration (González, 2019).

Consequently, in recent decades, Chile has promoted a foreign policy that makes regional integration a secondary objective for rhetorical purposes, as it has concentrated its efforts on strengthening and fostering international relations with its main trading partners: Europe, the United States, and China. This impacts the approach to human mobility, as regional integration is key in facilitating the management of migrant mobilization and inclusion, which reduces the possibilities of Chile coordinating or promoting a multilateral regional response to the Venezuelan crisis.

#### CLOSING REMARKS

The Chilean State has made the transit and stay of certain foreign communities difficult since 2018 through additional requirements to enter and stay its territory. These measures were fundamentally administrative in nature: requiring consular visas, de facto denial of refuge, and optimizing

expulsion processes. These security-based and selective measures had been applied previously to other groups, such as Dominicans, who, due to the imposition of requiring consular visas in 2012, saw an increase in reports of their entry through unauthorized crossing points, as shown in Graph 4.

Such measures are part of a migration policy whose guidelines are not necessarily consistent with the manifest or explicit purposes declared by the legislation, but are rather based on juridical-administrative practice. In addition, they are circumscribed within a model that oscillates between securitization and economization, and makes rhetorical use of humanitarianism, as its axis of action is the negative selectivity of migrants. As such, Chilean policy sees mobility as a potential threat to public order and security, by linking it to transnational crimes, while understanding it as a potential benefit that must be taken advantage of through the management of migrant flows, which serve, among other things, to provide the labor market with cheap labor and precarious jobs.

At the same time that the State expels the *bad* migrant, it fails to provide an effective solution to those migrants who are in an irregular situation, which conditions their rights and aggravates their situation of vulnerability. Thus, it leaves only one path to regularization, the juridical one, which is indirect and exceptional, allowing the State to balance or equilibrate contradictory social demands and interests: the need for order, security, and social control demanded by the citizens, with the requirements of the industry to get hold cheap labor.

On the other hand, the critique of the way in which migration policy was formulated shows that the government's border and migration control plans implemented in Chile failed, as evidenced by statistics, since such plans led to an increase in irregularity and in the precariousness of border-crossing (SJM, 2022). Thus it can be understood the increase in the Venezuelan migrant flow as a crisis, and to show, at the same time, that the response of the Chilean State was not ad hoc, but rather followed the course already set by an ambivalent policy, which oscillates between securitization and economization, and ignores the human rights model. Therefore, the policies adopted have established the Chilean State as a producer of migratory irregularity, a management that has contributed to exacerbate the humanitarian crisis.

Translation: Fernando Llanas

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