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**Policy-representations in the Temporary
Protection Statute for Venezuelans in
Colombia:**

**Market-formed solutions within the humanitarian
relief and the human rights protection nexus**

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Abstract

Humanitarian responses to crises are the product of policy representations within local political arenas. In this research paper, I approach the policy representations that informed the Colombian Temporary Protection Statute for Venezuelans (TPS) as a humanitarian response. Reflecting on them could open the door for a new understanding of the policy problem and address the existing policy gaps. The Post-structural Policy Analysis (PPA) is the methodology deployed in this endeavour. It enabled me to explore the assumptions regarding the Venezuelans in Colombia, the pragmatic presuppositions that oriented the TPS as a solution, and its implications in the humanitarian relief and human rights protection nexus. I conclude that the TPS is a market-driven solution underpinned in the prevailing representation of Venezuelans as migrants and burden-holders, with some pending issues in human rights matters.

Relevance for Development Studies

Currently forced migrations are a global challenge. Mainstream policymaking has adopted securitization and contention approaches to govern them. They comprise exclusionary myths, national borders reinforcement, and market dynamics. Nonetheless, few research endeavours inquire the policymaking or make it accountable as part of the causes of the forced migration crises. It is less frequent when they are presented under ‘humanitarian’ or ‘emergency responses’ labels in the Latin-American context. This research seeks precisely to approach the policymaking in the case of the Colombian TPS for Venezuelans forced migrants. To do so, the investigation undertake the humanitarian relief and human rights protection nexus as a product of competing policy representations in the local political arena and the PPA as methodology. As a result, it contributes to making accountable humanitarian responses, it also shows the particularities of forced migration governance in Colombia and Latin America, and it enriches the debates around humanitarianism from the Global South perspective.

Keywords

Policy-representations, Venezuelan Refugees and Migrants, Humanitarian Relief and Human Rights Protection, Temporary Protection, Colombia.

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List of acronyms

IASFM	International Association for the Study of Forced Migration
CONPES 3950	Estrategia para la Atención de la Migración desde Venezuela (Strategy for Attention of the Migration from Venezuela in Colombia)
CONARE	Comisión Asesora para la Determinación de la Condición de Refugiado (Advisory Commission for the Determination of Refugee Status)
EU	The European Union
IOM	International Organization for Migration
MC	Migración Colombia (Colombian Migratory Authority)
MRE	Ministerio de Relaciones Exteriores de Colombia (Colombian Ministry of Foreign Relations)
PPA	Post-structural Policy Analysis
PEP	Permiso Especial de Permanencia (Special Permission of Permanence in Colombia)
PEPFF	Permiso Especial de Permanencia para el Fomento a la Formalización (Special Permission of Permanence in Colombia for the incentive of the Labour Formalization)
RUMV	Registro Único de Migrantes Venezolanos (Unique Registration of Venezuelan Migrants in Colombia).
TPP	Temporary Protection Permit
TPS	Temporary Protection Statute
UNHCR	United Nations High Commissioner for Refugees
US	The United States
WHS	World Humanitarian Summit
WPR	‘What’s the problem represented to be?’ tool

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Chapter 1. Introduction

During 2019, while being a humanitarian worker in the Colombian-Venezuelan border advocating the rights of refugee and migrant children, listening carefully to people's stories in Venezuela and now in Colombia, made me reflect upon the following questions, (i) Why are 'we' (the humanitarians) still talking about 'emergency' after five years of hosting Venezuelans in Colombia; (ii) Does it make sense to give a different treatment to a population that is encountering well-known Colombia's structural violence; and (iii) Are not policies adopted partially responsible of reproducing people's vulnerability. This research paper is an attempt to honour the trust allotted to me by the Venezuelan refugees and forced migrants and local Colombian communities in 2019. I draw near those questions by inquiring about the Temporary Protection Statute (TPS), the last measure adopted by the Colombian government to protect Venezuelans. It could expand the comprehension of the policy problem to formulate new or additional policy measures.

Humanitarian responses within local political arenas are constructed based on competing policy representations regarding the migration crises, the subjects, and intervention objects. Post-structural Policy Analysis (PPA) as a methodology contributes to unpacking those policy representations and the exercise of power-knowledge through them. Instead of addressing humanitarian responses as standard formula, I precisely inquire how representations around the crisis, its subjects, and objects triggered the ten years Colombian TPS for Venezuelans, as a policy and 'humanitarian' solution, with specific implications in the nexus between humanitarian relief and human rights protection. To explore it, I apply the PPA to the TPS's text (D. 216/2021) and the views expressed by different stakeholders who directly or indirectly participated in its formulation. The above leads to conclude that the prevailing assumptions related to Venezuelans as migrants and burden holders and presuppositions about pragmatic management of the crisis prompt the TPS as a market-driven solution with protection gaps regarding the discretionary powers and social policy.

1.1. Research problem: Governance and Policy-representations around Venezuelan forced migrants and refugees in Colombia

The massive arrival of 2 million Venezuelan refugees and migrants since 2015 as to June of 2021 has been addressed by the Colombian government and the international community in terms of a 'humanitarian crisis' or 'emergency' (CONPES 2018; OAS 2019; UNHCR 2021).

Consequently, the local policymaking has framed the responses into ‘humanitarian relief’ terms, which means, in principle, exceptionality, temporary, and short-term measures to tackle the crisis (Hilhorst and Jansen 2010; Hilhorst 2018). The recent adoption of the TPS (D. 216/2021), which recognizes Venezuelans regular migratory status in Colombia for ten years, was also qualified by the UN High Commissioner for Refugees, Filippo Grandi, as ‘the most important humanitarian gesture in decades’ (UNHCR 2021a).

This generous-looking approach to regularizing Venezuelan refugees and migrants in Colombia for ten years leaves questions from the political arena perspective (Hilhorst and Jansen 2010) regarding the nexus between humanitarian relief and human rights protection (WHS 2016 and 2016a), or the need and usefulness of integrating these approaches. In other words, how these measures bring in (i) rights holders, (ii) duty bearers (Gready and Ensor in Hilhorst and Jansen 2012), (iii) claims of citizenship and justice, and (iv) structural and institutional changes (Nguya and Saddiqui 2020). Therefore, the present research paper seeks to inquire the policymaking around the humanitarian crisis by addressing the policy representations about the crisis.

The migration and refugee crises of recent years have turned into one of the most salient issues globally facing many regions of the globe (Global Compact on Refugees 2018) and influencing regional (OAS 2019) as well as national policy agendas. However, at all levels, stakeholders frame the problem in ways that either tend to transform human mobility into a security threat (Legomsky and Rodríguez 2009; Hammerstadt 2014) or to reinforce classical humanitarian approaches (Harrell-Bond in Fiddian-Qasmiyeh et al. 2014). In each case, State-centred responses tend to be promoted, which identifies *state policies* with solutions rather than identifying them as part of the problem (Fiddian-Qasmiyeh et al. 2014; Okafor 2020). This tendency has been most visible in the United States (US), in the EU, but also the Global South, including in Africa, Asia, and Latin America (Okafor 2020).

In Latin American concrete case, despite the region was considered for many years as a model of migrants’ and refugees’ protection due to the recognition of the asylum as a fundamental right at the constitutional level and the extensive definition of the refugee condition in the 1984 Cartagena Declaration (Barichello 2019; Freier and Gauci 2020); the current Venezuelan fleeing has reinforced the thesis of the lack of material implementation of these protection standards, partially because of the non-binding nature of the latter (Freier and Gauci 2020). Additionally, the current crisis has triggered a regressive legislation in which it is not clear the recognition of the refugee condition to the Venezuelans and governments receives highly discretionary power to attend the situation under so-called ‘humanitarian’ or ‘ad-hoc’ approaches (Acosta et. al. 2019; Freier and Gauci 2020).

Thus, it is necessary to deconstruct the crisis' representation that has triggered these sorts of responses. Unpacking the representation or the discursive construction of the humanitarian crisis, in this case, involves establishing the assumptions and the subjectification processes of the 'Venezuelans' in Colombia. Then, 'they' are not in advance migrants or refugees or regular/irregular migrants. They are referent objects, categorized in those ways in an exercise of power-knowledge with policy implications (Jorgensen 2012; Bacchi and Goodwin 2016; Hintjens et al. 2021). The implications are visible in the politically shaped nexus between humanitarian relief and human rights protection in which solutions for these populations can vary from neoliberal approaches to durable ones with strong positive burdens for the States (Barnett 2012; Hilhorst and Jansen 2010; Hilhorst 2018). The TPSs are 'gift-boxes.' Despite not being formal solutions for refugees and forced migrants, according to their underlying assumptions and presuppositions, they can be closer to human rights protection (Crock and Bones 2015; Ineli-Ciger 2019).

The TPS adopted by the Colombian government on the past 1st of March of 2021 is a benchmark in the so-called 'Venezuelan emergency' in Colombia. After a series of short-term measures (2 years), this Statute transcends the previous temporary outline and seeks to include all the Venezuelans settled in Colombia till the 31st of January of 2021 (article 4 Decree 216/2021) in a Unique Registration to guarantee them regular permanence in the country and access to rights and services such as health, education, and job opportunities (preliminary considerations and art. 6 D.216/2021). In that sense, the TPS also includes a sort of socio-economic survey (art. 6 and 8 D.216/2021).

1.2. Research Questions: Assumptions, presuppositions and implications in the TPS for Venezuelans in Colombia

Consequently, in this research paper, I inquire about the policy-representations and the governance of Venezuelan refugees and forced migrants in Colombia, expressed in the TPS, as follows:

How problem's representation or construction informed the Temporary Protection Statute for Venezuelans in Colombia -TPS- (D. 216/2021) formulation within the local political arena and which were the implications of this representation in the TPS contents, in terms of the humanitarian relief and the human rights protection nexus?

The above implies also to approach the following sub-questions:

1. Which were the assumptions and representations of the Venezuelans in Colombia that informed the TPS's formulation?
2. Which were the presuppositions or motivations that justified the TPS's formulation?
3. Which were the implications of these assumptions and presuppositions in the TPS's contents, in terms of the humanitarian relief and human rights nexus approaches observed?

1.3. Justification: Humanitarian responses accountability in Latin America

Colombia is part of the regressive Latin-American tendency. Even before the crisis, Colombia was not distinguished as a State with outstanding legislative good practices around migrants' and refugees' protection (Freier and Gauci 2020). In the Colombian case, the endeavours were focused on the internally displaced people protection due to the internal armed conflict and socio-political violence, even acting as a contention tool to avoid an international or transborder crisis (Sánchez-Mojica 2009). In the current Venezuelans arrival to the country, Colombia has followed the same regional pattern of temporary protection measures that allow transitory regular permanence of migrants and refugees in the country but not necessarily accountable duties for the State (Freier and Gauci 2020). Hence, reinforcing the statement the less recognition of refugee status the more binding rights are neglected (Neumayer in Freier and Gauci 2020: 327).

The local contexts are a point of departure for further research. As Freier and Gauci (2020) remark regarding the current Venezuelan flight:

'These phenomena have shown that the lived experience of refugees is heavily impacted by a plethora of factors that go well beyond legal and institutional frameworks, and involve both socio-political and structural elements, such as rising xenophobia in political rhetoric and public opinion, or limited state capacity (p. 360).'

Therefore, this research contributes to inquire the specific nature, the determinant variables, or the making process of these kinds of measures and their impacts, appealing to interdisciplinary methods.

The literature regarding the nexus between humanitarian relief and human rights protection as a political arena, highly contextual (Hilhorst and Jansen 2012; Barakat and Milton 2020; Nguya and Saddiqui 2020), results useful as a theoretical framework to understand the policy-making process of the new TPS for Venezuelans in Colombia critically and its gaps. Besides, the location of this literature in Colombia contributes with the insights of a group of literature that traditionally has focused its endeavours on crisis and conflicts in other places of the Global South such as Africa and the Middle East (Hilhorst and Jansen 2012; Howe 2019; Barakat and Milton 2020; Nguya and Saddiqui 2020). This exercise can not only contribute to making accountable the humanitarian responses and actors in America Latina (Hilhorst and Jansen 2012). But also, it can enrich the dialogue within the Global South to decolonize the humanitarian interventions and comprehend the dominant actors and their narratives to challenge them critically, from the global south to the global north, from bottom-up (Hilhorst and Jansen 2012; Freier and Gauci 2020: 360; Fiddian-Qasmiyeh and Pacitto 2016; Barakat and Milton 2020).

Finally, this research offers a new angle that complements previous academic works situated in Colombia as a locality to study the problem. These have concentrated on one hand, on the daily vulnerabilities (Alarcón 2019) and negotiations that face Venezuelan migrant women trying to survive across the Colombia-Venezuela border. Venezuelan women representations are polymorphic and agentic, instead of determining them just as economic subjects or suffering bodies within migration (Ávila 2019). On the other hand, they have focused on the participation of Venezuelan workers in the Colombian labour market during the humanitarian crisis, based on an economic depiction or cost-benefit of Venezuelan migrants, thus advocating for their migratory regularization but also dignity in the job conditions (Silva 2019; Cabrera 2019; Briñez et al. 2021).

1.4. Paper structure

In this paper, I explore the policy-representations around the crisis and Venezuelans that informed the TPS in Colombia. Thus, in the following chapter, I introduce the Post-structural Policy Analysis (Bacchi and Goodwin 2016), the methodology that enabled me to identify and analyse the competing and convergent assumptions and assumptions that shaped the TPS, and its implications. This methodology also allowed exploring my positionality. In the third chapter, I present the case study and the Colombian TPS for Venezuelans core contents. In the fourth, I elaborate on the theoretical framework and the concepts that underpin the governance around refugees and forced migrants, the labels and the consequent humanitarian and human rights protection measures, emphasizing the Temporary Protections and their surrounding assumptions and presuppositions. In the fifth, I explore concretely the assumptions and presuppositions that informed the Colombian TPS's for Venezuelans adoption and their

implications in the TPS' contents, which are visible in the humanitarian relief and human rights protection' approaches adopted in the TPS. Finally, in the sixth chapter, I expound on my conclusions.

Chapter 2. Methodology: Post-structural Policy Analysis

Realities co-constructed by discourses and practices are approached through qualitative methods (Charmaz 2006; Mohajan 2018). Among the different qualitative methods, Post-structural Policy Analysis (PPA) seeks to identify and understand the power-knowledge devices exercised through the construction of 'social problems' or 'policy problems', which are expected to be intervened or governed through policy solutions (Foucault in Bacchi and Goodwin 2016). Thus, in the PPA framework, policy problems are not given in advance, nor are their solutions. Solutions are constructed through the creation of political problems within political arenas (Bacchi and Goodwin 2016). Therefore, the PPA is well suited to explore the problem and the research question posed here about how the problem of Venezuelans in Colombia was represented to shape the TPS as a desirable political solution, and the implications of this representation of the problem expressed in the text of the TPS.

In a context in which mainstream neoliberal policymaking tends to categorize and shape people to reinforce power imbalances, for Bacchi and Goodwin (2016), the PPA allows identifying how through the problem's construction governmentality is exercised, creating, and fixing a set of practical inclusions and exclusions, within specific disciplinary arenas, policy-making fields, and subjects; also, pointing how this framing is contingent and can be changed. The policy-workers can also have agency and a role in the critical 'policies making and re-making' through their role as analysts (2016: 8-10). For this aim, Bacchi and Goodwin (2016) suggest an analytical tool to inquire the policies about *'What's the Problem Represented to be (WPR).'*

It involves asking about the production of the 'problem' by questioning at the same time for the creation of 'subjects' and 'objects' within specific settings or political arenas (Bacchi and Goodwin 2016), as I do in this research paper by inquiring about the 'Venezuelans' representation in Colombia, the motivations or presumptions to adopt the TPS, and their implication in the TPS adopted approaches: humanitarian relief and human rights protection.

In the following chart, I show how the some of the questions of WPR tool helped to address the research sub-questions about the assumptions and presumptions about the subjects

(the ‘Venezuelans’) and objects (the situation of Venezuelans in Colombia) that informed the TPS adoption, and their implications in the TPS:

<i>Research sub-questions</i>	<i>‘What’s the problem represent to be?’ tool rephrased according to the research topic (Bacchi and Goodwin 2016)</i>
1. Which were the assumptions and representations of the Venezuelans in Colombia that informed the TPS’s formulation?	Question 2: What deep-seated presuppositions or assumptions (conceptual logics) underlie this representation of the “problem” (problem representation)? Or 2.1. What are the assumptions regarding Venezuelans legal status in Colombia? 2.2. What are the assumptions around the type of measures Venezuelans are entitled to, from the lenses of humanitarian relief and human rights protection?
2. Which were the presuppositions or motivations that justified the TPS’s formulation?	Question 2: What deep-seated presuppositions or assumptions (conceptual logics) underlie this representation of the “problem” (problem representation)? Or 2.1 What are the assumptions regarding Venezuelans legal status in Colombia? 2.2. What are the assumptions around the type of measures Venezuelans are entitled to, from the lenses of humanitarian relief and human rights protection? Question 3: How has this representation of the “problem” come about? Or 3.1. What pushed the Colombian government to adopt the recent Temporary Protection Statute (Decree 216/2021)? 3.2. What is different in relation to previous temporary instruments?
3. Which were the implications of these assumptions and presuppositions in the TPS’s contents, in terms of the humanitarian relief and human rights approaches observed?	Question 4: 4.1. What is left unproblematic in this problem representation in the Temporary Protection Statute (Decree 216/2021)? 4.2. Where are the silences in the Temporary Protection Statute (Decree 216/2021)? 4.3. Could it there be an alternative to the Temporary Protection? Question 5: What effects (discursive, subjectification, lived) are produced by this representation of the “problem” in the Temporary Protection Statute (Decree 216/2021)? Or 5.1. What are the effects of the regular status recognized to Venezuelans in Colombia? 5.2. What are the triggered measures of protection for the Venezuelans in Colombia, from the lenses of humanitarian relief and human rights protection?

Table 1. Research questions and the ‘What is the Problem Represented to be?’ tool (Bacchi and Goodwin 2016)

2.1. Data collection

According to Bacchi and Goodwin (2016: 18-19), in specific settings or political arenas, the ‘texts’ available in official documents and the actors’ speeches are ‘levers’ to understand governance or the shaping of subjects, objects, behaviours, and relationships. Thus, following exercises that applied the WPR tool to primary policy text data and media secondary data (Jorgensen 2012; Alexander and Convey 2013), I took as primary data the TPS’s text (D. 216/2021), and as secondary the official and media statements around the TPS’s published in the Venezuelan Migration Project (VMP) webpage, which is a media node about the Venezuelans situation in Colombia.

In addition, I collected primary data through interviews with the stakeholders involved in the TPS adoption. It allowed me to go deeper into the WPR tool application. Thus, the participants were selected through purposive sampling (King et al. 2019), whose main criteria was to reveal the diversity of representations or opinions within the political arena. Its point of departure was to identify in the TPS's text and media the different actors involved in its adoption and their diverse views and positions (e.g., The Colombian Migratory Authority). This stage consisted of a preliminary mapping of the field or the political arena (Marcus 1995), which at the end was completed through the information available in media or suggested by other participants, as a sort of snow-ball sampling but always oriented by having the diverse voices emerging from the political arena (King et al. 2019). The participants also suggested other secondary data here reviewed.

In the end, from seven participants foreseen belonging to the Colombian government, the Venezuelan diaspora, Academia, Civil Society (Colombian NGO's), and International Organizations present in Colombia, the research ended with nine. I contacted them through email, inviting them to participate in the research with an informative sheet of the research aims, theoretical framework, and methodology (Appendix 1). In the next chart shows the nine (9) participants who were interviewed, according to their roles in the political arena and conventions assigned to reserve their identities:

Actor Type	Interviewees
Colombian Government: Foreign Relations Ministry and Migratory Authorities	Participants 3, 5 and 9.
Colombian Civil society and experts: NGO's and Scholars	Participants 1, 2 and 8.
Venezuelan Diaspora members and experts: Scholars	Participants 4 and 7.
International organisation: Member of the GIFMM ¹	Participant 6.

Table 2. Interviewed actors involved in the design, implementation and evaluation of the Temporary Protection Statute for Venezuelans settled in Colombia.

They accepted to participate in the research by signing an informed consent that allowed me to record the data provided while keeping their identity reserved (Appendix 2). Then, the

¹ In 2015, the international and humanitarian agencies consolidated the Interagency Group for Mixed Migration Flows (el Grupo Inter-agencial de Flujos Migratorios Mixtos) -GIFMM- for South America, regarding the Venezuelan influx. In the GIFMM, the UNHCR and the IOM co-coordinate the humanitarian response and technical advisory given to the region under the joint UNHCR-IOM 2018 and 2019 Guide Notes regarding Venezuelans status. Then the GIFMM expanded to each country. Nonetheless, in each country, the GIFMM develops different relations with the host State and can involve other actors in the humanitarian response. In Colombia, the GIFMM was created in 2016, is also co-coordinated by the UNHCR-IOM. It is integrated by 75 organizations, including the red cross movement, the church, and others from civil society, which provide aid to forced migrants and refugees.

anonymization of the sources obeyed ethical concerns and assured them free participation (Sörensson and Kalman 2018), without harmful implications in their daily relations within the political arena and their institutions, moreover when the policy-making process around refugees and migrations in Colombia is ongoing. All the participants were in Colombia. Hence, I conducted remote interviews in Spanish through zoom between the 26th of July of 2021 and the 1st of October of 2021. The interviews were individual and took around one or two hours.

The interviews were semi-structured, based on a questionnaire of around eleven (11) questions that unpacked the WPR tool and my research questions or made them simple to understand and answer for the participants. Nevertheless, as the interviews were semi-structured, there was also space to approach some aspects of the WPR tool in depth, according to the development of the conversation (Kvale and Brinkmann 2009; King et al. 2019).

2.2. Data analysis

All the interviews' records were transcribed or turned into digital documents. Those, the TPS's text, and other documents were coded according to the variables and categories present in the WRP tool and my theoretical framework. However, beyond the theory and methodology, the interviewees themselves suggested data-driven codes or codes that are particularly applicable to the case study and are not foretold by theory (DeCuir-Gunby et al. 2011). For this coding endeavour, Atlas ti. was used as support software. This kind of software also contributes to elaborate connections between the categories (DeCuir-Gunby et al. 2011).

In principle, 86 codes emerged. Nevertheless, they were simplified into 20 as follow in the table, whose connections here are presented in accord with the research sub-questions in chapter 5. In the present research paper, most of those codes are approached or written with quotation marks ("), to express that those terms are under inquire.

<i>Research sub-questions topics</i>	<i>Codes for the information analysis</i>
<i>Assumptions regarding the Venezuelans in Colombia</i>	Regular-Irregular Migrant, Refugee, Rights-holders, Burden-holders, Homo-economicus, Beneficiaries, Visible-Invisible, Permanence.
<i>Presuppositions for adopting the TPS</i>	Generosity, Sovereignty, Pragmatism, Public Opinion, Limited Capacities, Cooperation from the Global-North.
<i>Implications in terms of humanitarian relief and human rights approaches in the TPS</i>	Migratory Regularization, Needs, Socio-Economic Rights, Discretionary, Complementary with Refugee System.

Table 3. Data analysis codes

2.3. Methodological limitations

This research process began in June of 2021. By then, it was premature to address the Venezuelan grassroots communities' perspectives, especially those settled in the Colombian urban and rural peripheries. The COVID-19 pandemic and the ongoing TPS's implementation disabled me from contacting them in the field. It was only possible to include the diaspora integrands and experts' views through virtual platforms. Therefore, this research focused on the TPS's text and actors involved directly in its design, including Venezuelan diaspora members and experts, to avoid biased views just from the Colombian authorities and civil society.

In addition, although most of the COVID-19 restrictions have been progressively withdrawn in Colombia as the vaccination advances, all interviewees accepted to participate in the research remotely since they have continued working remotely even within Colombia. The remote interviews have proven to be a valid qualitative research method (Howlett: 2021) if ethical concerns are observed (Sörensson and Kalman 2018), the context is known in advance, and security protocols are adopted to save the data obtained through digital platforms (Mena and Hilhorst 2020). I followed those standards in this research process.

Finally, not all the actors from international organizations I expected to participate in this research accepted to do it. However, I rebuilt their perspectives through secondary data. The media and the voices of the other participants permitted it by triangulating or contrasting all of them.

2.4. Positionality

This investigation process involved careful awareness of the researcher's positionality or standpoint (Rosa 1997; Crossa 2012). Through the research, I was also part of the process of policy-analysis-working-making (Bacchi and Goodwin 2016). I was also a participant in the policy-making field (Marcus 1995). But I was also challenging my assumptions (Alvesson M. & Sandberg 2011). As a Colombian Human Rights and Humanitarian practitioner, who has worked tracing the policies for protecting Colombian internally displaced people (IDPs) and, recently, Venezuelan forced migrants and refugees in the country, I have approached with scepticism the legal measures whose point of departure is temporal and based on individual or burden schemes. Clear positive duties for the State are required, especially at the sub-national levels. In the case of the Colombian IDPs, this has been precisely one of the barriers to the policies designed (Cubie

2017). The aftermaths involve more segregation, xenophobia, and the generation of unaccomplished expectations for the vulnerable populations, regardless of the protective laws.

Nonetheless, I am aware that the ‘refugee label’ and the classical durable solutions could be also maximalist and elusive from the panorama, in the sense that States are more reluctant to address these sorts of measures (Ferris 2011: 175-177 and 275). It could trigger more burdens for refugees and forced migrants due to the restrictive legal systems (CIGI 2018). One diaspora member and research participant pointed out in this sense:

‘The discussion ‘migrant’ or ‘refugee’ does not make sense. I do not agree to turn into vulnerable the already vulnerable ones. Advocating for refugee status just makes people vulnerable and objects to stigmatization. People don’t need refugee status. It is enough to be a regular migrant. What people need is to be allowed to work. In that sense, I completely agree with the TPS adopted by the Colombian government.’

Similar views have been expressed by some scholars, quoting Hanna Arendt’s reflections on the refuge condition (Paéz 2021):

‘That experience teaches us the importance of an appropriate and (...) inclusive approach since the opposite leads to useless policies. The latter abound and come to life in advertisements, slogans, statements, and generalizations. One such generalization disturbed Hannah Arendt, who was horrified by the term refugee. She said in 1943: we call ourselves “newcomers” or “immigrants”’

Then, how my positionality has evolved after the research process will be explained in chapter six. My standpoint regarding considering Venezuelans settled in Colombia as refugees and forced migrants do not seek to talk for them or turn them into referent objects. It seeks simply to open the debate about the policy measures’ implications while protecting them from structural violence in Colombia. Consequently, it does not reproduce polarizing discourses around the Venezuelan political system (Ramírez 2020). As Bejarano wisely established in her research about the divergent trajectories and commonalities of Colombian and Venezuelan democracies: *‘Under the mixed weight of weak States and Party-Systems and the economic stuck and the negative impact of the primary materials international prices cycles (including the drugs), many Latin American nations are trapped in a sort of grey zone of precarious democracies or ‘unhappy’ ones (Bejarano 2011: 344)’.*

² Participant 4.

Chapter 3. The Colombian Temporary Protection Statute (TPS, D.216/2021) for Venezuelan refugees and forced migrants

With almost 6 million, Venezuela is the second country with more refugees and migrants in the world after Syria (UNHCR 2018, 2019, and 2021a). Approximately 40% or more of those refugees and migrants (2 million) are in Colombia (R4V 2021), which has turned Colombia the second receptor country in the world after Turkey (UNHCR 2021b), independently of the previous record of Colombian Internally Displaced People -IDP-. In Colombia, only 40% or less have regular permanence in the country, and 5% are officially seeking asylum from the Colombian government (R4V 2021). The recent adoption of the Temporary Statute of Protection for Venezuelan Migrants (Colombian Ministry of Foreign Relations 2021) has created the expectation of recognizing Venezuelans regular migratory status or permanence in Colombia.

Some human rights organizations and scholars consider Venezuelans as refugees under the 84 Cartagena Declaration (Broner et al. 2018). Thus, the reason to leave Venezuela is the massive violation of HR and the situations that alter the public order (Broner et al. 2018: 3 and 9-12). Besides, they recognize specifically that the rights massively violated in the home- and arrival-countries are the ESCR, mainly the rights to health and an adequate standard of living (Broner et al. 2018; González 2019; Jiménez et al. 2021; Ardón et al. 2021).

Additionally, human rights organizations have established the vulnerabilities and risks to which Venezuelan migrants and refugees are exposed in Colombia because of their specific conditions. For example, the lack of legal protection in the country and its temporality has caused other HR violations, coming for state agents and thirds. Venezuelans in Colombia face discrimination, xenophobia (Observatorio de Venezuela 2018; OXFAM 2019; Barómetro de xenofobia 2021), abuses from the authorities, human trafficking, sexual and labour exploitation, and other HR violations and IHL infractions in the frame of the continuity of the Colombian violent conflict (Broner 2018; HRW 2019; CODHES 2020 and 2021).

Regardless of the trajectories and particular causes, Colombia and Venezuela exhibit nowadays features of weak or 'unhappy' democracies (Bejarano 2011: 337). Colombia is failing in the recent peace process implementation and coping with the emerging violence (FIDH 2020). Venezuela is trying another peace process while I write these lines. However, even if the results

are positive, the return of the population under conditions of security and dignity is still incognita (ICG 2021).

In a context of increasing violence, poverty, and xenophobia (Appendix 3), the Colombian government adopted a series of measures to protect Venezuelans. Most of these measures pursued to regularize the migratory status for terms of 2 years (Moreno and Pelacani 2021). In the following table, I review some of those by highlighting milestones and their legal hierarchy. I include those that enabled the TPS adoption. The legal hierarchy indicates how robust the instruments are from the policymaking perspective⁴.

Normative hierarchy and year of adoption	Norm purpose	Number of documents of this type	Protection time foreseen
Public Policy Document CONPES 3950/2018	<ul style="list-style-type: none"> Creation of the Strategy for Attention of the Migration from Venezuela. 	1	4 years – enabled legally to adopt the TPS ⁵
Decrees Decree 1288/2018 Decree 117/2020	<ul style="list-style-type: none"> Creation of the Unique Registration of Venezuelan Migrants in Colombia (Registro Único de Migrantes Venezolanos -RUMV-). Creation of the Special (Exceptional) Permission of Permanence in Colombia for the incentive of the Labour Formalization (Permiso Especial de Permanencia para el Fomento de la Formalización -PEPFF-). 	2	2 years – with subsequent renovations for the same period

⁴ Participants 8 and 9.

⁵ *That in recommendation number 7 of Document CONPES 3950, it was decided to request the Special Administrative Unit Migration Colombia to propose, together with the Ministry of Foreign Affairs, alternative figures of migratory flexibility, eventually analogous to the temporary protection models existing in other countries, which facilitate the governance of the migratory flow from Venezuela and make it possible to resolve the limitations derived from the migratory status, to attend to the economic insertion of migrants and the satisfaction of critical needs.* 'D. 216/2021 Considerations. pp. 9-10, 21° line of action of the CONPES 3950/2018 p. 101 and views of the research participants 1, 3, 5, 8 and 9.

Resolutions Among others:	Recognize Special Permission of Permanence in Colombia (Permiso Especial de Permanencia - PEP-).	13	2 years of protection with different dates of initiation
Resolution 5797/ 2017	<ul style="list-style-type: none"> • First PEP adopted. 		
Resolution 2540/ 2019	<ul style="list-style-type: none"> • PEP adopted for members of the Venezuelan security forces. 		
Resolution 3548/ 2019	<ul style="list-style-type: none"> • PEP for asylum seekers. 		

Table 4. Temporary Protection Statute Antecedents, by the Author

After its announcement on the 21st of February of 2021, the Colombian government uttered the TPS on the 1st of March of 2021. The TPS (D. 216/2021) offers to regularize the migratory status for ten years (articles 2, 3 and 11 D. 216/2021) of the Venezuelans in the country in the following situations:

‘(i) being the holder of the previous protection measures foreseen by the Colombian government (e.g., PEP and PEPFF); (ii) being asylum seeker holding a formal solicitude document (SC-2); (iii) being irregularly in the Colombian territory before the 31st of January of 2021; and (iv) entering to the country through regular migratory control counters until the 1st of March of 2023 (art. 4 D. 216/2021).’

The TPS comprises two stages, first, the registration and the inclusion into the *Unique Registration of Venezuelan Migrants in Colombia (Registro Único de Migrantes Venezolanos -RUMV-)* (art. 5-9 D. 216/2021), and second, the posterior solicitude and obtention of the *Temporary Protection Permit (TPP, Permiso Especial de Permanencia)* (art. 10-16 D. 216/2021). According to Resolution 971/2021, of the 28th of April of 2021, which develops the TPS implementation procedures, the Registration stage also comprises three steps: first, the virtual pre-registration, which can be done between the 5th of May of 2021 to the 23rd of November of 2021, depending on the particular situation of the Venezuelan asking for the inclusion into the registration (art. 3-8 R. 971/2021); second, the socio-economic survey regarding health, education and inclusion programs access and levels (art. 9 R. 971/2021); and third, the biometric presential registration, in which Venezuelans add information to the socio-economic survey and give their biometric data for the TPP’s issue (art. 11-13 R. 971/2021)⁶.

The *socio-economic survey* is expected to seek and provide data for a future policy design (art. 6 D. 216/2021). The fulfilment of the registration procedures does not guarantee the change of the migratory status (paragraph 1 art. 3 R. 971/2021). In other words, the Venezuelans remain

⁶ Participants 3, 5 and 9.

without protection until the obtention of the TPP, indifferently of the registration procedure completion⁷.

Once the former three steps are concluded, and the Venezuelans fill the documentation and proof requirements, the Special Administrative Unit of Migration Colombia will have 90 days to decide on an individual basis if the Venezuelan may or not receive the TPP document⁸. The migratory authority will additionally have another 90 days to deliver it (art. 14-21 R. 971/2021). Public servants and members of international organizations call the TPP colloquially ‘the plastic’⁹. If the Venezuelan receive the TPP is supposed to act as a valid identity document in Colombia. It enables access to rights but specially to celebrate formal labour contracts or other legal nature. Likewise, it permits to be part of the social security system (art. 11 D. 216/2021; art. 14 R. 971/2021).

Finally, the TPS foresee special rules for those asylum seekers with active refugee solicitudes. In those cases, the asylum seeker can also access the registration and TPP solicitude procedures. Nonetheless, if the decision of the Colombian Migratory Authority is positive regarding the TPP, the asylum seeker or refugee applicant must decide between being protected by the TPP or refugee condition in Colombia (art. 16-17 D. 216/2021 and art. 17, 24, and 37 R. 971/2021).

Chapter 4. Theoretical framework: the humanitarian field as a political arena of policy-representations

For this research paper, the humanitarian field is a political arena (Hilhorst and Jansen 2010) in which the humanitarian responses or the nexus between different protection frameworks (WHS 2016; Cubie 2017; CIC 2019) are not homogenous formulas, rather than approaches constructed through the exercise of power-knowledge within specific contexts and localities (Tronc 2019; Barakat and Milton 2020; Weishaupt 2020; Nguya and Saddiqui 2020). They depend on policy representations and power relations around the definition of the so-called humanitarian crisis and its subjects (Hilhorst and Serrano 2010; Hilhorst and Jansen 2010; Ferris 2011; Hilhorst 2018). In this sense, the theoretical framework interlinks with the methodology suggested by Bacchi and Goodwin (2016). The assumptions and practices around the situations,

⁷ Participant 1.

⁸ By the 31st of August of 2021, 1.182.059 Venezuelans were in the TPS’s first stage or included in the RUMV (MRE 2021a), and 230.000 of them had completed the step of the biometric presential registration (MRE 2021b). The first Venezuelan who obtained his TPP, or the so-called ‘plastic,’ did it on the last 13th of October of 2021 (MRE 2021c).

⁹ Participant 3, 5, 6 and 9.

subjects, and objects imply and prescribe specific policy solutions as suitable to govern the policy problems.

Therefore, the labelling or representation of ‘migrants and refugees’ as part of the humanitarian crisis depiction is pointing in advance to the ‘policy solutions’ within the local political arena. Those policy solutions implicate the contents of the nexus between humanitarian relief and human rights protection. Thus, in this section, I explain the concepts around: first, the different labels to represent these populations; second, the implications of those labels in terms of humanitarian relief and human rights protection; and third, the temporary protection measures as a policy solution for these populations within the humanitarian relief and human rights protection nexus.

4.1. Who are ‘they’? Labels matter

There is a consensus in the literature that the traditional legal distinction between ‘Migrants’ and ‘Refugees’ is nowadays more blurred (Richmond in Fussell 2012; Martin 2012; Betts 2013; Loescher 2014; Heintze and Lülff 2018; Hintjens et al. 2021) and categories as ‘Forced migrants’ (Martin 2012; Hintjens et al. 2021), ‘Survival migrants’ (Betts 2013) or ‘Development Displacees’ (Castles in Hintjens et al. 2021) are more accurate to define the peoples’ current flee and movements within and outside national borders. Despite the fact there is no binding international legal instrument that adopts these categories, this conclusion has been obtained through different academic approaches, and international (e.g., the UNHCR and the IOM) and regional organizations seem to reinforce it in the practice through the expansion of the ‘Refugee’ definition or the adoption of new categories (e.g., ‘Internally Displaced Person’, subject of international protection, etc.) (Martin 2012 ; Betts 2013).

Nonetheless, in the national or ‘local’ scope the recognition and usage of these categories are more discretionary, unstable, and highly dependent on political considerations and negotiations. Even more, there is a tendency to restrict the application of notions as ‘Refugee’ or those implicating human rights protection in the domestic sphere (Roseblum and Cornelius 2012; Betts 2013; Hintjens et al. 2021; Loescher 2014). In the following lines, I will explain the traditional legal distinction between ‘Migrant’ and ‘Refugee,’ and I will reflect on the academic approaches that point their lack of clear boundaries, and finally, the political factors that intervene in States’ advocacy for clear-cut limits around these concepts.

Under the *International Refugee Law*, emerged with the *1951 Geneva Convention relating to the Status of Refugees* and its *1967 Protocol*, a **Refugee** is one person who must flee from its origin country and has the right to seek international protection in another State due to a ‘well-founded fear of persecution based on race, religion, nationality, membership of a particular social group

or political opinion'. Thus, the person is unwilling or cannot ask for protection from the original or own State. Consequently, the Refugee has the onus on proving on an individual basis to the host State that a 'well-founded fear of persecution' exists to be formally recognized in that State as a 'Refugee' (Goodwin-Gill and McAdams 2007; Martin 2012; Betts 2013). Meanwhile, the person is just an *Asylum Seeker* who has the right to be not forcibly returned to the home country (Goodwin-Gill and McAdams 2007; Hintjens et al. 2021).

In contrast, a *Migrant* is a person who is willing to cross national borders seeking better living conditions, understanding better living conditions, economic factors, such as work and income (Fusell 2012; Rosembaum and Cornelius 2012; Hintjens et al. 2021). This definition is derived from the 1990 *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* in its article 2°.

Hence, the volition and the cause of the movement are the criteria that seem unambiguous to delimitate the categories 'Migrant' and 'Refugee' (Fusell 2012 and Martin 2012). However, precisely, those criteria challenge the legal definitions, explain the blurred lines among them and point out their protection gaps. Conceptually, *volition* seems to be the more questioned element involved in the distinction. Although moving action always implies a range of volition, social structures, structural violence, and generalized human rights violations conditionate, shape or push the peoples' will to move (Fusell 2012; Betts 2013; Galtung in Hintjens et al. 2021).

Therefore, some scholars propose to observe volition as a *continuum* between migration, displacement, and asylum-seeking rather than a criterion to set boundaries (Richmond in Fussell 2012). As a result, policymakers must carefully consider the degrees of volition and the influence of injustice or unfair conditions in decisions around moving, even if there is not direct and individual persecution (Foster 2007; Betts 2013). In this context, concepts such as *economic refugee* (Foster 2007), *forced migration* (Martin 2012; Hintjens et al. 2021), or *survival migration* (Betts 2013) can be operative to foster protection in those cases in which the volition is highly driven by generalized situations of human rights violations, failed and authoritarian institutions and economic deprivation.

In that sense, the forced migration and the displacement are used as 'umbrella' concepts (IASFM and UNHCR in Hintjens et al. 2021) that comprises different hypothesis o situations in which international protection is required, for example, *refugee, asylum-seeking, internally displacement, statelessness, human trafficking, among others not foreseen by the law* (UNHCR in Martin 2012; Hintjens et al. 2021). One of those situations is *survival migration*. According to Betts (2013), the survival migration is represented by those cases in which, despite there is no direct persecution, the economic deprivation and the state failures are of such magnitude that "*they [the survival migrants] are not migrating for economic betterment, unless you call finding enough to eat economic motive* (Bett 2013: 4)."

This statement challenges the volition of economic improvement as defintory for migration. Betts (2013) exemplifies the survival migration through the Zimbabwe case (2000-2010). An undemocratic regimen pushed 2 million people to flee to countries like South Africa, although there was no direct persecution against them. The reason was absolute desperation for deprivation. The same criterion has been applied by some scholars for the Venezuelan situation as a '*migración de la desesperación*' [Desperation Migration] (Paéz and Vivas in Acosta et al. 2019). Human Rights Watch has also recognized the similarity of the Venezuelan situation with the Zimbabwe one (Broner et al. 2018).

Consequently, scholars as Betts advocate for a definition of 'survival migrant' that focuses on the lack of guarantee of human rights and vulnerability to recognize international protection, from a human rights perspective; instead of one based on the determination of specific or causes, determined individually or case by case (Betts 2013). Additionally, Loescher (2014) indicates the 'mixed migration' term, adopted by agencies like the UNCHR, as suitable to characterize these situations which not fit easily within the limits of the traditional legal categories.

Regarding the Venezuelan situation, the UNHCR has uttered two Guide Notes. In the first, the UNHCR (2018) states the *Venezuelans' International Protection Need, despite their diverse, mixed, and individual considerations for leaving the country*¹¹. In that sense, the UNHCR calls the hosting States of the region to *apply the regional instrument regarding refuge -the Cartagena Declaration (1984)-*¹², to guarantee collective, simplified, and temporary arrangements to protect the Venezuelans arriving through a comprehensive refugee definition. In the second, the UNHCR (2019) reinforces the same criteria due to the worsening of the Venezuelan domestic situation. Nonetheless, the UNHCR adds issues regarding (i) its coordination with the IOM to advise and assist the host

¹¹ "1. *Venezuela continues to experience a significant outflow of Venezuelans to neighbouring countries, other countries in the region, and countries further afield. While individual circumstances and reasons for these movements vary, international protection considerations have become apparent for a very significant proportion of Venezuelans. UNHCR's concern for Venezuelans outside their country of origin implicates UNHCR's mandate (...)* (UNHCR 2018)."

¹² "2. (...) UNHCR is ready to work with States to devise appropriate international protection arrangements in line with national and regional standards, in particular the 1951 Convention relating to the Status of Refugees and the Cartagena Declaration. Such arrangements are guided by the principle that providing international protection is a humanitarian and non-political act. Providing international protection is consistent with the spirit of international solidarity, of which countries in the Americas region, including the Bolivarian Republic of Venezuela, have a long history. (...) 6. If a State has incorporated the broader criteria set out in the Cartagena Declaration into their national legislation, UNHCR encourages States to consider the application of this regional definition in the case of Venezuelan asylum-seekers, including as a basis for accelerated or simplified case processing. In light of the wide range of information available on the situation in Venezuela, UNHCR considers that the broad circumstances leading to the outflow of Venezuelan nationals would fall within the spirit of the Cartagena Declaration, with a resulting rebuttable presumption of international protection needs (UNHCR 2018)."

States¹⁴; and (ii) the host States' duty of observing the obligations that emerged from the Global Compact on Refugee¹⁵.

Finally, the strict and restrictive usage of legal categories has also been challenged from a *power-knowledge perspective* (Foucault in Bacchi and Goodwin 2016; Jorgensen 2012) developed by the *Critical Security Studies* (Hintjens et al. 2021). Under this approach, the deployment of specific legal categories or labels in particular contexts, rather than protective, can be exclusionary and trigger the opposite – dis-protection and dehumanization of those requiring international protection or sanctuary-. This critique shows how migration and forced migration, as an umbrella concept, rather than an exception, are the rule within the history of capitalism (De Haas, Duffield, Polanyi, and Sassen in Hintjens et al.).

Nowadays, the difference is that forced migrants are more frequently moving from the South to the Global North (De Haas in Hintjens et al.). Consequently, a myth around migration has been created that justifies the reduction of international protection, the restrictive legal interpretation of the 'refugee' category, and the securitization in the Global-North (Loescher 2014; Hintjens et al. 2021). Hence, 'they' are *referent objects of securitization* (Barnett 2014; Hintjens et al. 2021) and 'otherization' (Kothari 2006; Lugones 2010; Glick-Schiller and Meinhof 2011).

Paradoxically, as the demand for international protection increases due to the failure of developmental and democratic promises, forced migrants are depicted as a security threat or a negative charge for the national and regional economies in the Global-North (Hintjens et al. 2021). This generates containing and criminalization policies that confine them out of the Global North, inside national boundaries, or other Global South countries. Humanitarian aid is used for that purpose, and third -non-developed- States as an *out-sourcing* of 'Temporary Legal Protections,' that erase the refuge condition or the right to international protection and the States' derived duty to guarantee economic and social rights (Loescher 2014; Hintjens et al. 2021).

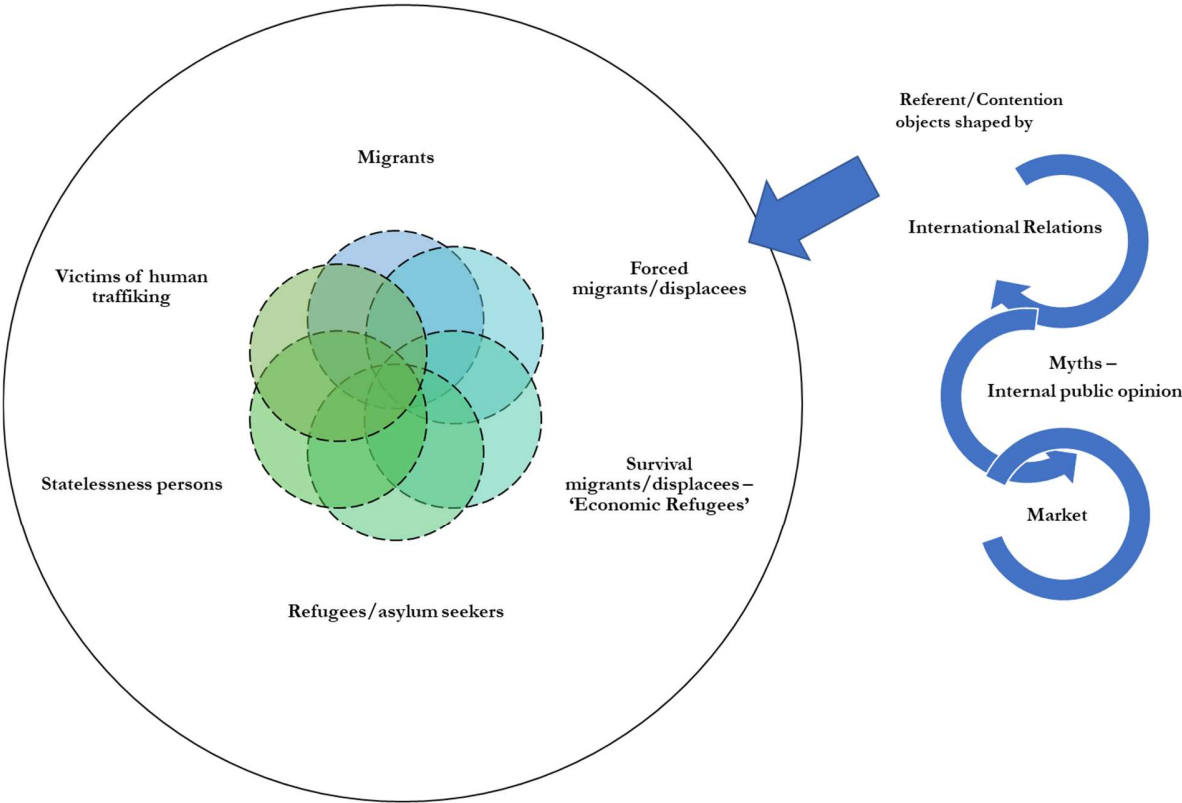
Then, constructed categories around human mobility do not emerge in a power vacuum. The States relations within the global and economic system are always present (Roseblum and Cornelius 2012). The so-called 'refugees' humanitarian crises' appeared at the beginning of the XX century precisely because of the emergency of national borders. Since then, the

¹⁴ "8. UNHCR and IOM have conducted a joint analysis of good practices on protection sensitive arrangements designed by governments in the Americas to respond to the outflows of Venezuelans. The analysis examines the extent of their alignment with the minimum standards and aims at reinforcing the protection dimension and coherency of responses. Drawing from this, UNHCR and IOM stand ready to support States (UNHCR 2019)."

¹⁵ "11. In view of the challenges that host countries are facing, international responsibility-sharing in the spirit of the Global Compact on Refugees is key. Such an approach would build on the partnership established between UNHCR and IOM, engaging their respective mandates, roles and expertise."

humanitarianism around refugees has also acted as a kind of contention strategy for the nascent State-Nations, beyond the suffering alleviation ideal (Barnett 2014: 245).

In that sense, three factors are involved in the stakeholders' categorization or referent objects creation in local contexts: (i) the relations between the States at in three levels: neighbouring, regional, and global, in regards to funding and international legitimacy; (ii) the myths around the human mobility that feed the public opinion (e.g., the electoral) and the decision making; and (iii) the market dynamics (Betts 2013 and Hintjens et al. 2021). The three factors and their implications can be traceable through the discourses and official acts of the stakeholders in specific localities (Bacchi and Goodwin 2016; Jorgensen 2012). This power-knowledge critique and factors involved in the mainstream conceptualization will inform this research.



Graph 1. Forced migration/displacement categorization, based on Foster 2007, Martin 2012, Betts 2013, Loeschner 2014 and Hintjens et al. 2021, by the author

In the graph above, I summarize the possible categories and factors involved to define human mobility, showing, first, how the delimitations are blurred or are not clear; second, how they can be easily overlapped, intertwined, or confused, for example, 'survival migrants' end up being categorized as victims of trafficking; third, how there is in fact levels of vulnerability (non-linear or overlapped) comprised within the umbrella of the category called 'forced migration';

and fourth, how these categories are externally constructed and most of the time is turning people in ‘referent objects’ or ‘suffering bodies’ (Hintjens et al. 2021), rather than agents in their protection pathways.

4.2. ‘What to do with ‘them?’: the humanitarian relief and human rights protection nexus within the political arena

According to Hilhorst (2018), in the global political arena, there is a tendency regarding refugee and forced migrants’ crises of labelling them in terms of just ‘migrants’ or leaving the path full of ambiguities. The above contributes to erase the right to protection, precisely to deny the duties with Economic, Social, Cultural, and Environmental Rights -ES-CER- that the ‘refugee’ label encompasses and to open wide ranges for States’ discretionary for selecting measures more related to neoliberal formulas or the capacity-building (Betts 2013; Hilhorst 2018; Hintjens et al. 2021). Consequently, the question around ‘who are ‘they?’’ also implies ‘what to do with ‘them?’’ from the power-knowledge perspective that informs this research. In that sense, the humanitarian responses, rather than a fixed catalogue, are contingent and dependant on the practice of the different humanitarian actors involved in the local political arenas (Cubie 2017; Hilhorst 2018).

In principle, humanitarianism has two main paradigms in tension: on one side, the ‘classical’, on the other, the ‘non-orthodox,’ which give different scope and content to the obligation to protect forced migrants and refugees (Barnett 2012). However, nowadays, it is more common to observe these two paradigms as complementary or as a continuum that brings together humanitarian relief and human rights protection, according to the political arena settings. In the following lines, I will define the two paradigms within humanitarianism to then explain the political arena perspective that consolidates the nexus between them.

The ‘*classical humanitarian paradigm*’ aims to relieve the immediate suffering once the crisis is caused by war, under strict observance of impartiality, neutrality, independence, and humanity principles. It enables direct access to people at risk or places in which political flags or statements would block the action possibilities (Barnett 2012; Hilhorst and Jansen 2010; Hilhorst 2018; Cubie 2017). It is underpinned in a notion of exceptionalisms of the circumstances and responses (Hilhorst 2018). Thus, it triggers short-term material humanitarian aid for forced migrants (MacAlister-Smith in Cubie 2017: 290), mainly in refugee camps (Hilhorst and Jansen 2010), and legal assistance in narrow terms of registration and orientation about the regular status in the host country (Loescher 2014; Barnett 2014). Besides, the approach and the language used refers to ‘needs’. In that sense, the target is to calculate and fulfil requirements under a utilitarian logic -cost-benefit- (Cubie 2017).

On the other hand, *'non-orthodox' humanitarianism* pursues beyond alleviating suffering, also overcoming it, or coping with its causes (Barnett 2012). Thus, its intervention scope is not limited to war and armed conflict situations (Barnett 2012; Hilhorst 2018). It tackles other situations like disasters and the current environmental challenges (Hilhorst 2018) and even structural and cultural inequities that trigger structural and cultural violence (Galtung 1990). The humanitarian crises and their responses are not exceptional with unique and evident causes. As a result, 'non-orthodox' humanitarianism can also be an umbrella of different approaches. Its actions imply a wide range of alternant perspectives or spectrum of actions, from capacity-building, capacity-strengthening, and sharing, to more durable, distributive, transformative, and 'from below' approaches, engaging with a Human Rights-Based Approach (Barnett 2012; Martin 2012; Jacobsen 2014; Hilhorst 2018).

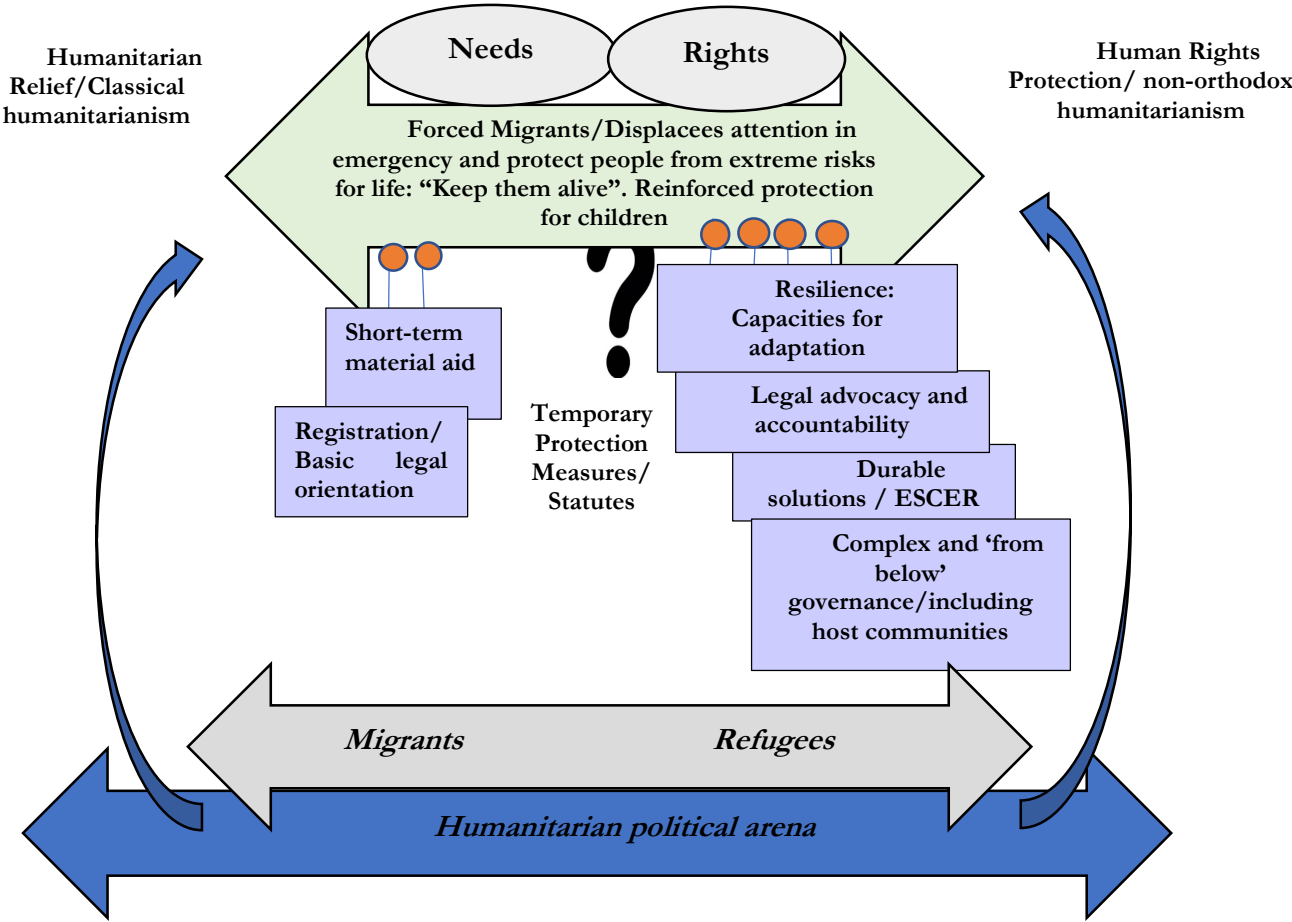
However, currently, even classical humanitarian strategies use this Human Rights-Based Approach in their interventions, or vice versa, non-orthodox humanitarian actions address basic needs with short-term measures (Cubie 2017). Therefore, there are also *commonalities and continuums between the two paradigms*. The two humanitarian paradigms have encounter points or middle grounds within the apparent tensions. For instance, both would understand as part of the protection notion the response in emergency cases to save lives from extreme risks for the life and integrity and guarantee refugees' and forced migrants' children reinforced protection, especially in contexts of armed conflict (Barnett 2012; Cubie 2017).

In addition, as stated above, both paradigms -Classical and Non-orthodox- can consolidate a nexus between humanitarian relief and human rights protection for forced migrants and refugees, within *local political arenas*. From this viewpoint, classical and non-orthodox humanitarianism approaches and measures can converge or remain parallel and even in tensions. It comes from the power and knowledge adscription of the crises and the subjects to specific types and labels (e.g., armed conflict of high intensity, refuge, migration, disaster, etc.) (Hilhorst and Jansen 2010; Jorgensen 2012; Bacchi and Goodwin 2016; Hilhorst 2018).

Subsequently, the disputes and choices around the more market-driven capacity building programs, the convenience or not of durable solutions, the inclusion or not of host communities in the programs, or the understanding of human rights as a pure principle in humanitarian actions or as transformative of the local context are not purely conceptual and inoffensive. They come from a political arena with actors who exercise power and knowledge and negotiate choices. Then, rather than a competition between the classical (short-term) and the non-orthodox (long-term) paradigm, the question is how much is possible to advance within the humanitarianism from resilience market-driven to more durable and 'from below' and inclusive solutions.

The graph bellow illustrates the wide range of humanitarian measures adopted for refugees and forced migrants. It shows the tensions and the continuums, the languages in terms of rights and needs deployed, but at the end shaped and defined by turning people fleeing into referent objects (Jorgensen 2012; Hintjens et al. 2021) within the political arena. Nowadays, the challenge

is determining the ‘Temporary Protection Measures or Statutes’ nature or scope within the humanitarian responses spectrum. Although they are more common for the so-called ‘refugees’ and migration crises’ management (Ineli-Ciger 2019), little is known about their presuppositions and effects.



Graph 2. Tensions and continuums between the Humanitarian Relief and the Human Rights Protection, based on Barnett 2012, Hilhorst and Jansen 2010, and Hilhorst 2018, by the author.

The ideal of pragmatism and flexibility around them for responding efficiently to the so-called ‘exceptional’ crises seems to erase any possibility of accountability (Ineli-Ciger 2016). However, their protective or subordinating effects for these populations are highly dependent on the local contexts. In the following section, I will explore the antecedents, debates, and some experiences around this contemporary governance strategy of human mobility.

In the case of Venezuelan migrants and refugees in Colombia, humanitarian agencies report registration and short-term material aid provided through interagency platforms (e.g., the R4V platform). In addition, recently, a ‘Temporary Protection Statute’ was adopted and qualified as

‘the most important humanitarian gesture in decades’ (UNHCR 2021a). Nonetheless, it is necessary to clarify the place that it could occupy in the humanitarian responses spectrum, attending the local political arena.

4.3. Temporary protection measures

The temporary protection measures or statutes -TPS- for addressing refugees and forced migrants’ situations are not a novelty of the XXI century, despite their common usage in the era of the migration and refuge crises portrayal as a security threat (Hintjens et al. 2021; Ineli-Ciger 2019). In the ’70s and ’80s, East Asian countries and Australia used TPS’s for coping with the Vietnamese and others fleeing due to wars in Asia (Durieux 2014; Crock and Bones 2015; Ineli-Ciger 2019). In the ’90s, the UNHCR prompted this tool to handle the Bosnians and Kosovans arriving in western Europe because of the armed conflict (Durieux 2014; Roxström and Gibney 2003). In 2001, the European Union adopted the Temporary Protection Directive, that despite not being used, is the instrument regarding this sort of temporary protection of more hierarchy within the international public law (Kälin 2001; Ineli-Ciger 2019; O’ Sullivan 2019).

Since then, the TPS’s have been highly contested because of their eroding aftermath for refugee protection systems and its aspirations of justice and balance between the global north and global south (Edwards in Crock and Bones 2015; Roxström and Gibney 2003). Nonetheless, there is nowadays consensus that TPS’s are not per se negative, contradictory, or exclusionary of the refugee protection under the basis of the 51 Convention and its 67 Protocol, especially regarding durable solutions. Their impacts will depend on the assumptions that underlie their design and their implementation in the local contexts of the host countries (Kälin 2001; Durieux 2014; Crock and Bones 2015; Ineli-Ciger 2019; O’ Sullivan 2019).

Thus, TPS’s can be ‘gift-boxes.’ They can be assessed within a wide range. They might be from a protective pragmatic, tailored, and suitable solution in complex local contexts (Ineli-Ciger 2016) to a system of ‘unchecked controls over lives of ‘other people’ (Crock and Bones 2015),’ highly violators of human rights standards. In the end, the answers will depend on the assumptions and implications surrounding the local context.

Hence, in this part, I will highlight, first, the features and assumptions that build the TPS’s definition from the compared experience. Second, I will recap the criteria that could turn the TPS closer to the Human Rights Protection. It will enable me to assess the recent TPS for Venezuelans in Colombia in the following chapters.

According to Ineli-Ciger (2016 and 2019), who has studied from the legal perspective systematically the temporary protection measures for refugees and forced migrants, the TPS is applicable in situations of (i) massive and imminent influx of people fleeing from the home

countries; or (ii) ‘exceptional’ or ‘humanitarian’ circumstances; in which (iii) there are protection gaps to adjust the people fleeing to the traditional and strict definition of ‘refugee’ under the 51 Convention; (iv) the host countries cannot cope them through the traditional individual refugee condition recognition system; and, consequently, (iv) the effect is to guarantee temporary regular permanence in the country or non-refoulement, and a rights to address basic needs in the host country, while durable solutions are contemplated.

It is assumed as a ‘pragmatic’, ‘flexible’, ‘adaptable’ and ‘tailored’ solution in the sense that, despite not being regulated expressly by the international refugee and human rights law, it enables to respond to numerous and exceptional situations (Ineli-Ciger 2016). Hence, this assumption implies practices or high discretionary of the host States regarding the definition of the ‘exceptional’¹⁶ situation by itself, the time¹⁷, the aimed subjects, and the coverage of the TPS’s (Durieux 2014; Crock and Bones 2015; Ineli-Ciger 2019).

In addition, regardless of the willingness or not to protect refugees and forced migrants (Ineli-Ciger 2016), the ‘TPSs pragmatism’ has proven in practice to be helpful for the national States to handle three different and interrelated situations. First, the internal anti-immigration or anti-refugees feelings or the criticisms against the government (Roxström and Gibney 2003; Crock and Bones 2015; Yakoob in Ineli-Ciger 2016). Second, the lack of intra-regional consensus (Durieux 2014; Ineli-Ciger 2019) and, even more, global south-north disagreement for receiving refugees and forced migrants and assume, proportionately, the triggered burdens (Roxström and Gibney 2003). Third, the reduced capacities of the hosts’ States to guarantee rights to the incoming population. Moreover, when they are not part of the global north and are just the first respondents of crises that could have replicated in the global north (e.g., Jordan, Turkey, among others) (Crock and Bones 2015; Ineli-Ciger 2019).

In these cases, the assumptions and practices around Temporary Protections go hand in hand with languages and discourses that reinforce the ‘temporality.’ There is the expectation that temporary residence will be followed by future repatriation or return options as a durable solution (Durieux 2014; Ineli-Ciger 2016). In that sense, the guarantees provided to refugees and forced migrants in the host countries are depicted as ‘reduced’, implicitly avoiding the full local integration (Durieux 2014; Ineli-Ciger 2016). Therefore, the warrants are a product of the States’

¹⁶ In the US case, TPS or Temporary Visas due to Humanitarian reasons are provided regarding different causes as wars, endemic violent conflicts, generalized human rights violations, and disaster. Thus, a limited number of nationals from El Salvador, Haiti, Honduras, Nepal, Nicaragua, Somalia, Sudan, South Sudan, Syria, and Yemen, are guaranteed this type of humanitarian permanence visas that allows working in the country. Nonetheless, the Secretary of the Department of Homeland Security keeps broad discretionary faculties to withdraw them (Ineli-Ciger 2019). Recently, the US Biden administration decided to utter Temporary Protection Visas for those Venezuelans ‘physically present’ in its territory before the 8th of march of 2021. Thus, those asylum seekers expelled by Trump administration to Mexico cannot apply to the Temporary Protection (HRW 2021).

¹⁷ According to the compared experience, the Temporary Protections operates initially in a lapsus of 3 and 5 years, regardless of prorogues, and the debates around the facts that should allow their ending (Durieux 2014; Crock and Bones 2015; Ineli-Ciger 2019; Fitzpatrick and Castillo and Hathaway in O’ Sullivan 2019).

‘generosity’ (Crock and Bones 2015), and refugees and forced migrants are just ‘beneficiaries’ or ‘guests’ (Roxström and Gibney 2003; Crock and Bones 2015), instead of right-holders.

Besides, paradoxically, despite the TPS's are adopted because of the lack of regional and cross-regional coordination and agreement for refugees and forced migrants reception (Durieux 2014: 241-242; Ineli-Ciger 2019: 59), they are also advocated as a suitable ex-post strategy to call for funding and burden-sharing with the global north (Durieux 2014: 251; Ineli-Ciger 2016: 95-96 and 106-107). Consequently, as internally ‘they’ -the refugees and forced migrants- are portrayed as ‘reduced right-holders,’ externally ‘they’ are depicted as ‘truly refugees’ whose protection should be properly financed by the global north countries, at the risk of fateful consequences for them.

The above has triggered a sort of ‘blackmailing’ or ‘bribing’ between first respondent countries or receptors in the Global South and the Global North at the expenses of refugees and forced migrants, whose suffering is recognized, erased, or portrayed at convenience (Freier et al. 2021). Consequently, refugees and forced migrants are turned into just suffering bodies and referent objects. They are objects of securitization, contention, and now, commodification. Those who are spoken and otherized, but rarely, speak by themselves, within the surrounding discourses, policies, and practices (Jorgensen 2012; Chouliaraki and Stolic 2017; Hintjens et al. 2021; Freier et al. 2021). This tendency has been traced in the Middle East, Sub-Saharan Africa, and, recently, in South America regarding the Venezuelans forced migrants and refugees. Host States highlight in their discourses, first, the massiveness and the consequent figures of the influx crises, and second, the institutional collapse risk (Freier et al. 2021).

The TPS are legal tools that catalyse these speeches. They allow us to observe possible contradictions towards a willingness to protect refugees and forced migrants. Therefore, it is also necessary to establish case by case the assumptions, practices, and discourses surrounding them (Freier et al. 2021). Afterward, it will be possible to know if TPS’s are closer or further to control, otherize and commodify forced migrants and refugees. Middle grounds are also possible.

Consequently, the assumptions and practices that inform the Temporary Protections in local contexts can or cannot make them closer to more structural and non-orthodox humanitarianism responses. From the compared experience in advance, it is possible to conclude that TPSs are not durable solutions. Furthermore, they are detached for durable solutions for the public opinion, under the assumption of possible repatriations, rather than local integrations involving plenty guarantee of ESCER. Therefore, most of the time, they are encompassed and intertwined with dynamics of market integration in the host countries, emphasizing notions of capabilities, responsibilities-based, and burdens for those ‘beneficiaries,’ not necessarily right-holders, of these sort of protections (Hilhorst 2018; Crock and Bones 2015; Ineli-Ciger 2019; Jutvik and Robinson 2020).

However, the possibilities of TPS being closer to human rights protections depends on: (i) going beyond a strict refugee definition, in other words covering the whole umbrella of forced migrants; (ii) respect basic human rights guarantees such as the due process and avoid arbitrary treatments; (iii) guarantee non-refoulment and basic needs such as food, shelter, emergency health care and means of subsistence; and finally (iv) define in advance future transition to durable solutions (Ineli-Ciger 2016).

The recent TPS adopted by the Colombian government has been portrayed as truly exceptional for its ten years of protection coverage: ‘an important humanitarian gesture’ (UNHCR 2021a). Its surrounding assumptions and practices will help comprehend its humanitarian and human rights approaches and implications in the coming chapters. The Post-structural Policy Analysis (PPA) methodology, described in the second chapter, helps to identify and analyse those underlying assumptions and presuppositions that by themselves make this instrument closer or further from human rights protection and durable or suitable solutions for Venezuelan forced migrants and refugees.

Chapter 5. The Colombian TPS’s for Venezuelans: assumption, presuppositions and implications within the local political arena.

Following Bacchi and Goodwin (2016), the politics around the policy problems representations can be made visible by inquiring about their underlying assumptions and presuppositions that underpin the problem construction. These assumptions and presuppositions produce ‘subjects’ and ‘objects’ within ‘heterogeneous and strategic relations and practices’ or political arenas (Marcus 1995), in which power relations are not fixed and as neither the production processes of these ‘subjects’ and ‘objects.’ Those are processes constantly and contingently reinforced and contested, according to the relationships within the political arena (Bacchi and Goodwin 2016).

In this section, I explore the production of Venezuelans as referent objects (Hintjens et al. 2021) or their subjectification processes (Bacchi and Goodwin 2021) through the adjudication of the labels exposed in section 4.1. Likewise, I address the production of the situation or the ‘objects’ that justified the Colombian TPS adoption, according to the categories analysed in section 4.3 around the TPSs in the compared experience (Ineli-Ciger 2019). This enables me to answer the research sub-questions related to the assumptions and presuppositions that informed the problem representation and, consequently, the TPS as a policy solution. Finally, in this section, I undertake the implications of these assumptions and presuppositions in the TPS’s

contents, in terms of the humanitarian relief and human rights approaches adopted, based on the discussion stated in section 4.2 (Hilhorst 2018).

In this case, the ‘local’ political arena in which these subjectification and objectification processes occur is characterized, first, because there is no binding international instrument to protect refugees under the solidarity within countries, and the international system reproduces the binary ‘refugee’ – ‘migrant’ (Chimni 2018; Tschank 2019; Ferris and Donato: 2020; Micinski 2021). Therefore, the Colombian State has a wide range of discretionary to categorize Venezuelans, tending for the second approach, although according to theory, Venezuelans could be assessed as Forced or Survival Migrants requiring international protection (Betts 2013; Paéz and Vivas in Acosta et al. 2019).

Second, the Latin-American regional level emulates the international with non-binding instruments to protect refugees and forced migrants (Freier et al. 2020). Likewise, the lack of consensus and securitization approaches impose a de facto extra pressure over Colombia to adopt measures (Cañizález Ramírez 2018; Bonil 2019; Batallas 2020; Freier and Gauci 2020; Brumat 2021; Espitia 2021; Moreno and Pelacani 2021). Most Venezuelans are in Colombia. Third, the heated diplomacy towards the Venezuelan government does not necessarily drive comprehensive protection for Venezuelans in Colombia. Before the TPS, Venezuelans were imposed of disproportionate burden to have regular status in Colombia (Ramírez 2018 and 2020; Pardo 2021; Moreno and Pelacani 2021). Fourth, violence, poverty, and xenophobia are not giving time for the Colombian government to adopt measures that go beyond the short-term regularization formula.

5.1. The Venezuelans are assumed as ‘migrants,’ to be ‘visible’ and assure permanence.

The civil society and some scholars and diaspora members (CEJIL et al. 2018; Bolívar 2020) have advocated unsuccessfully for recognizing most Venezuelans as ‘refugees’ under the Cartagena Declaration signed by Colombia in November of 1984. The international organizations, by its side, despite the joint UNHCR and OIM’s guidelines of 2018 and 2019, advocating international protection, have been hesitant in this issue, even calling Venezuelans ‘*displaced abroad*’ and enabling more discretionary margins to the government (Bolívar 2020; Moreno and Pelacani 2021: 197-198)⁵⁸. Then, the Colombian government, which

⁵⁸ Participants 7 and 9.

has a dominant position in the political arena, has adopted a predominant ‘migratory’ framework by constantly referencing the Global Compact for Migration⁵⁹, as it was stated in the TPS’s text:

‘That on December 1, 2018, Colombia signed the Global Compact for Safe, Orderly and Regular Migration through the Ministry of Foreign Affairs, which aims to join forces to deal with the migratory phenomenon globally, taking into account the circumstances of speed, volume and intensity of migratory flows, as well as the impact it generates on the states.’ D. 216/2021 considerations. p. 3.

Thus, most participants in the research associate the TPS’s approach as a migratory⁶⁰. Consequently, this tool would portray Venezuelans as ‘migrants.’ It indicates volition to cross borders and intention of developing economic activities in the host country, marking a clear difference regarding the ‘refugee’, who, on the other hand, cross borders forcibly and seeks protection beyond the economic scope (Martin 2012). Therefore, it is not a coincidence that the Colombian TPS denomination is ‘Temporary Protection Statute for Venezuelan Migrants Under the Temporary Protection Regime.’

Nonetheless, inside the TPS’s text, there is no consistency in the voluntary and economic approach of the phenomenon. Despite the predominant use of the word ‘migrant,’⁶¹ the expression ‘refugee’⁶² is likewise deployed, and the Venezuelan political and socio-economic crisis⁶³ is recognized, which implicitly opens the door for international protection under the definition comprise in the 1984 Cartagena Declaration. However, words as ‘forced migrant’ or ‘survival migrant’ (Betts 2013 and Paéz and Vivas in Acosta et al. 2019) or a generalized recognition of Venezuelans as refugees are not present in the TPS’s text.

It is not only because they are not binding from an international legal perspective (Freier et al. 2020), but also because, as some government officials and civil society experts recognized, the government is aware of the ‘burdens’ that these categories comprise for the State from the perspective of ESCER guarantee⁶⁴. It proves what scholars have already detected: the less recognition of refugee status, the more rights are neglected (Hilhorst 2018; Neumayer in Freier and Gauci 2020: 327; Hintjens et al. 2021).

Now, as in the compared experience, the Venezuelans representation as a policy problem in Colombia is also based on their binary depiction in terms of ‘regular migrant’ and ‘irregular

⁵⁹ Participants 3, 5 and 9.

⁶⁰ Participants 1, 2, 3, 4, 5, 7, 8 and 9.

⁶¹ 88 references.

⁶² 23 references.

⁶³ D. 216/2021 Considerations. pp. 13-14.

⁶⁴ Participants 1, 2, 7 and 9.

migrant,’ ‘deserving/ non-deserving, and ‘desirables/non-desirables’ (Jorgensen 2012; Crock and Bones 2015; Bacchi and Goodwin 2016; De Hass in Hintjens et al. 2021). In the TPS’s text, it is stated in the following terms:

(...) it is evident that the number of Venezuelan migrants with irregular migratory status corresponds to a percentage greater than those whose situation has been regularized (...) the proportion of migrants of Venezuelan nationality who are in the national territory in an irregular situation has also shown a significant increase, to the point of exceeding the percentage of migrants who are in regular conditions (...) D. 216/2021 Considerations. pp. 10-11.

Though the Colombian case has its specificities since the main implication of this distinction is not necessarily an open securitization or contention as it happens in the Global North (Hintjens et al. 2021). Colombia has adopted ‘generosity’ as the other face of sovereignty exercise due to pragmatic motivations. And the ‘generosity’ implies to conceive Venezuelans overall as ‘beneficiaries’ (VMP 2021b) rather than rights holders, who should be ‘grateful’. It is visible in the TPS’s text⁶⁷ as well as in the Migratory Authority Officials statements (VMP 2021b)⁶⁸:

*I have not heard but the largest number of Venezuelan people saying that they are immensely grateful, with a giant level of expectation, and that each time they feel that they are closer to reaching that plastic [Referring to the Temporary Protection Permit -TPP-], as I said a moment ago, because behind that's what they're (...). The only thing one hears behind is a feeling of immense gratitude (...).*⁶⁹

However, as Moreno and Pelacani (2021) and some participants demonstrate⁷⁰: the TPS, rather than a concession, is a necessity that emerged from the protection gaps left by the previous PEPs’ deficient design. The PEPs’ disproportional requirements for Venezuelans restricted access to regularization or ‘regular’ migratory status.

Additionally, the binary ‘regular/irregular’ that underpins the TPS generates another one concerning ‘visibility/invisibility.’ According to the TPS’s text, the TPS, and the TPP, the so-called ‘plastic,’ have the effect of converting ‘irregular migrants’ in the country before the 31st of January of 2021, into regular, existent, or visible:

⁶⁷ *That the access to benefits through the mechanisms of migratory flexibility is exclusively oriented to the irregular migratory condition and situation of the Venezuelan citizens (...)* D. 216/2021 Considerations. pp. 13.

⁶⁸ Participants 3 and 5.

⁶⁹ Participant 3.

⁷⁰ Participants 1, 2, 7 and 9.

'Application scope. The Temporary Statute of Protection for Venezuelan Migrants Under the Temporary Protection Regime applies to Venezuelan migrants (...) who meet any of the following conditions: (...) 3. Being in Colombian territory irregularly as of January 31, 2021 (...)' Article 4 D. 216/2021

Then, it is not a coincidence that the official campaign for the TPS's promotion is called 'VISIBLES' (VMP 2021b). Hence, those out of the TPS's application scope are invisible or into a grey zone. For them, the government officials have not foreseen measures, even if they know that Venezuela's situation will take time to change and more 'irregular migrants' might continue arriving in Colombia⁷².



Graph 3. VISIBLE logo

Thus, in principle, in Colombia, the irregular migrants are not openly and generalized objects of persecution and detention for posterior expulsions as in the US, the EU, and Australia (Crock and Bones 2015). Nonetheless, the fact that they are not regular or visible implies that they do not exist for the Colombian State and the omission for preventing human rights violations. They lack protection against latent violence and poverty in the country. Consequently, to be 'regulars'

⁷² *'This type of tool [The TPS seeks] to protect the population that is already in the territory to discourage irregular migration (...) We did (...) further, during the two years following the entry into force of the Statute (...) they will be able to enter the Statute, it is like promoting regular and not irregular migration, (...) because what we do not want is for them to understand that they can come and continue to put themselves in danger. It is because it is that only crossing the border where they do it is putting their life in danger, it is being subjected to inclement weather, drowning in a river (...) from bullets. It's about traffic, robberies, everything that happens to them. So, faced with our responsibility, let's say that we were clear in telling them not to take revenge because they will not be able to be protected (...) '[Colombia] a country with so many difficulties has been very generous (...) But that [the coming irregular migration] will already be projections for the future. But what we wanted at the moment is to discourage [irregular migration] knowing that sometimes they have no other option. But if they reflect on the fact that they will not be protected and that their only way would be to request refuge. But we wouldn't want to either, because (...) it has important implications (...) And let's also say that administratively for us it is a significant burden to reject or deny that. Then, unfortunately, well, it is that we are obliged at this moment to shelter the millions, which is what being esteemed, which is a work, is a very important sum. And meanwhile, pray that something happens, something has to happen so that people do not have to go to their country, because being a migrant is very complex and in the conditions in which they are arriving it is very sad.'* Participant 5.

or exist, Venezuelans assume a series of requirements and obligations as part of their condition as ‘beneficiaries - regular migrants’. As a result, ‘burdens’ are likewise part of the definition of the ‘migrant’ status and being ‘deserving’ of protection within a State (Jorgensen 2012).

Those burdens are present in articles 8 (Requirements to be included in the registration), 9 (Registration Information Updating), 12 (Requirements for obtaining the TPP), and 20 (Venezuelan Migrants Duties) of the TPS (D. 216/2021). They comprise, among others: documentation, declaration of the willingness of a temporary permanence in Colombia, consent for the biometric data collection, constant updating information duty, having no criminal and administrative infractions records, and being objects of sanctions in case of not following the Migratory Authority procedures and not obtaining ordinary regularization.

But, as a member of the civil society remarks regarding those ‘burdens’: *‘What I feel is that [arbitrariness in procedures and taking biometric data] is not at the center of the discussion because it is a price that people are willing to pay to enter the statute.’* Therefore, the TPS is not only shaped under this conception, but the TPS also has moulded the subjects. It has triggered a process of subjectification (Bacchi and Goodwin 2016) in which Venezuelans internalize and adopt the ‘burdens’ as normal ones, given the precarity experienced and considering the PEPs’ operation as the TPS’s antecedent (Moreno and Pelacani 2021)⁷³.

Besides, it is necessary to highlight how although the TPS is a temporary tool, as it is highlighted in its text and requirements for Venezuelans⁷⁴, at the same time, the text (as follows) and the engaged actors recognize the Venezuelans permanence willingness in Colombia (around 80% of the population):

‘(...) according to the figures (...) the arrival of Venezuelan migrants to the national territory with the intention of permanence continues to rise (...)’ D. 216/2021 Considerations. pp. 10.

This element distinguish the Venezuelan ‘migration’ from others now present in Colombia, like the Haitian one (France 24 2021a). Participants in the research foresee the Venezuelan situation will even endure beyond the ten years established in the TPS⁷⁶. Then, this problem representation also has implications that I will explore in the TPS’s text in section 5.3.

⁷³ Participant 4, 7 and 9.

⁷⁴ *‘Requirements to be included in the Registry. (...) 4. Present an express declaration of the intention to remain temporarily in Colombia (...)’* Article 8 D. 216/2021.

⁷⁶ Participants 1,2, 3, 4, 5 and 7.

5.2. Pragmatism as the core motivation for the TPS's adoption

The problem representations are also based on presuppositions that motivate or justify policymaking. These presuppositions likewise reveal the rationalities or the governmentality logics that pretend to govern the problem. These rationalities tend to be 'unexamined ways of thinking,' deeply settled in the western and neoliberal mindset (Foucault in Bacchi and Goodwin 2016). In the case of the TPS, these presuppositions or motivations emerged from the main political arena features. All of them justified and created a specific logic to govern the 'refugee and migratory crisis,' which in other TPSs in the world has been defined in terms of '*pragmatism*' (Ineli-Ciger 2019), reinforcing the TPS as the best political choice in terms of costs-benefits or optimization.

The aftermath of the lack of regional consensus regarding the Venezuelan crisis: the massiveness of the Venezuelan influx in Colombia is recognized as a core motivation in the TPS's text and the reason for claiming resources from the international cooperation⁷⁷ (Chadwick in Freier et al. 2021). The TPS describes detailed figures to compare the Venezuelan-Colombian situation with the Syrian-Turkish:

'Given the magnitude of the phenomenon the country is facing, Colombia could already be considered one of the countries with the highest reception of migrants. According to UNHCR data, in mid-2017 Turkey had received more than 3.1 million people, expelled by the civil war in Syria (...) When comparing this information with the most recent figures from Migración Colombia on the phenomenon from Venezuela, Colombia, faced with this scenario, would position itself as the second country with the highest reception of migrant population (...). In this regard, it is important to emphasize the speed with which these mixed flows entered Colombia, since, while the figures for the Syrian migratory phenomenon correspond to a stock accumulated for six years, the income of the population from Venezuela happened in just over two years.' D. 216/2021 Considerations. pp. 9.

In that sense, some officials and diaspora members⁷⁸ focused on the 'generosity' of the Colombian government with the Venezuelans. For them, the country is giving a unique example to the world, when other countries reject migrants and have TPS of limited time scope. Colombia is receiving massively the Venezuelans despite its limited resources to handle the situation⁷⁹. The limitation of capacity and funds to deal with the 'migratory' crisis is likewise traceable in the TPS

⁷⁷ *'That Colombia has promoted efforts at the regional and global level to converge with other international actors, to mobilize a coordinated response among the receiving countries of Venezuelan migrants, and with cooperating sources to increase their support for the humanitarian response to the multidimensional crisis that is evidenced in Venezuela.'* D. 216/2021 considerations. p. 3.

⁷⁸ Participants 3, 4 and 5.

⁷⁹ Participants 1, 3, 4 and 5.

text⁸⁰. It reinforces the funding petition to the Global-North countries by remarking on the uniqueness of the Colombian TPS⁸¹.

In that sense, *'Pero también (but also), show me the money,'* the Migratory Authority Director's discourse portrays fully the message-oriented to the international cooperation regarding the TPS implementation in Colombia (VMP 2021b). Besides, it does so the comparison around the aid given to other 'refugees crises' in the world per capita: the Syrian (3000 dollars), South Sudan (1600 dollars), and Venezuelan (300 dollars per capita) (VMP 2021c).

Likewise, as in the theory (Roxström and Gibney 2003 and Crock and Bones 2015), some participants recognized that the TPS is a pragmatic measure to handle the internal public opinion in a context in which xenophobia is increasing, and the Colombian government is disapproved for not addressing the domestic issues regarding violence and inequality, exacerbated through the pandemic⁸². The emphasis on the 'temporality,' the 'requirements,'⁸³ and the 'good conduct obligations'⁸⁴ for Venezuelans in the TPS's text contributes to this aim. As two participants remarked, speaking about refugees or a protection time beyond ten years would have increased the internal political rejection of Duque's government⁸⁵. Thus, stressing the temporality, the 'migration' and sanctioning approach as appeared on media (VMP 2021b) was a strategy to avoid internal rejection. Nonetheless, the xenophobia is boosting more evidently after the TPS was uttered, according to one of the experts interviewed⁸⁶.

Now, before the TPS, the Colombian government's measures to protect Venezuelans had a regularization scope of only two years and were inefficient to cover the increasing figures of the so-called 'irregular migrants' (Bonil 2019; Moreno and Pelacani 2021). The TPS's text recognizes it as follows and recaps its antecedent instruments⁸⁷.

⁸⁰ *'That the mixed migratory flow of people from Venezuela has required an exponential increase in the capacities of all sectors to guarantee access to the State's offer.'* D. 216/2021 Considerations. pp. 13.

⁸¹ Participants 1, 8 and 9.

⁸² Participant 2 and 4.

⁸³ E.g., *'The Temporary Statute of Protection for Venezuelan Migrants. Under the Temporary Protection Regime applies to Venezuelan migrants who wish to remain temporarily in the national territory, and who meet any of the following conditions: (...) 4. Entering Colombian territory regularly through the respective legally authorized Immigration Control Post, complying with the requirements established in the immigration regulations.'* Article 4 D. 216/2021.

⁸⁴ E.g., *'Requirements for the granting of the Temporary Protection Permit (PPT). (...) 2. Have no criminal record, annotations or administrative processes sanctions or judicial proceedings in progress in Colombia or abroad. 3. Not having immigration administrative investigations in progress. 4. Not having against him a measure of expulsion, deportation or economic sanction valid. 5. Not have convictions for malicious crimes (...).'* Article 7 D. 216/2021.

⁸⁵ Participants 2 and 4.

⁸⁶ Participant 8.

⁸⁷ D. 216/2021 Considerations. pp. 3-8.

‘That despite the efforts made by the National Government through migration flexibility measures, (...) it is evident that the number of Venezuelan migrants with irregular migratory status corresponds to a percentage greater than those whose situation has been regularized (...)’ D. 216/2021 Considerations. p. 10.

These antecedents instruments were an average between eight and fourteen phases of PEP (Permisos Especiales de Permanencia)- Special Permissions of Permanence-, including their renovations⁸⁸. Most of them, except for the Decree 1288/2018, lacked coverage and protective scope, precisely because they imposed Venezuelans the burden of having a valid passport to access the PEP’s, when in practice obtaining this sort of document from the Venezuelan government has been impossible (Moreno and Pelacani 2021).

As one of the participants, diaspora member and expert, pointed out, sometimes *‘Colombia continues to assume that Venezuelans have the protection of our state, although here in the consulates (...) an apostille is practically impossible⁸⁹’*. Therefore, the high rates of irregular migration also obeyed the Colombian government’s policy design, which imposed severe access barriers to Venezuelans forced migrants and refugees (Moreno and Pelacani 2021).

Finally, pragmatism is not only a presupposition from the Colombian State. But it is also from some diaspora members’ standpoint, in the sense that the TPS allows a quick socio-economic integration without the barriers and burdens that the refugee system imposes⁹⁰. Nevertheless, the question of whether the problem is about strengthening other kinds of policies, including the refugee system, is still open (Bolívar in Moreno and Pelacani 2021).

To sum up, in line with theory (Roxström and Gibney 2003; Durieux 2014; Ineli-Ciger 2016; Crock and Bones 2015), the Colombian government adopted the TPS obeying the presupposition regarding the lack of intra-regional consensus, the massiveness of the influx, the reduced capacities to guarantee rights to the incoming population, the need of cooperation from the Global-North, and the internal anti-immigration or anti-refugees feelings and the criticisms against the government. Hence, the TPS is an expression of ‘pragmatism’ or ‘intelligent or efficient migratory management’ of the crisis, as some government officers, experts, and diaspora members interviewed pointed out⁹¹, beyond the protection willingness.

Additionally, in the Colombian case, the TPS was also an attempt to reduce the regularization inefficiency derived from the PEP’s system⁹². But overall, it was a try to quickly

⁸⁸ Participants 3, 5 and 9.

⁸⁹ Participant 7.

⁹⁰ Participant 4.

⁹¹ Participants 1, 2, 3, 8 and 9.

⁹² Participants 1, 2, 3, 5, 6, 7, 8 and 9.

insert the Venezuelans into the Colombian market without the complexities and stigmas derived from the current refuge system in Colombia⁹³.

5.3. *The implications in the TPS's contents: a nexus within humanitarian relief and human rights protection, but ... there is uncertainty about social policies*

According to Bacchi and Goodwin (2016), the assumptions and presuppositions are not only constitutive discursive or static elements of the policy problem construction or framing, but they are also practices or 'doings' that, as stated through power relations, shape realities and events to reinforce the construction of the problem (through subjects, objects, and places). In that sense, in this section, I present the practical implications of the core TPS's assumptions and presuppositions in the procedures to formulate the TPS and its contents, which allude to the research sub-question related to the TPS's observance of humanitarian and human rights protection approaches in its text. These implications at the same time reinforce those assumptions and presuppositions.

All above has implicated the simultaneous adoption of humanitarian relief and human rights protection approaches in the TPS's contents. The classic humanitarian relief approach, for instance, is present in statements that highlight the basic needs in the TPS's text:

'That (...) it was decided to request the Special Administrative Unit of Migration Colombia to propose, together with the Ministry of Foreign Relations, alternative forms of migratory flexibility (...), to attend to the economic insertion of migrants and the satisfaction of critical needs.' D. 216/2021 Considerations. pp. 9-10.

At the same time, for example, in the TPS's text, it is possible to identify the access to rights and the TPP as an identity document as a purpose of this tool, not only for those with PEP or valid refugee solicitude, now, also those who had no regular permanence in the country¹¹⁶:

'That the lack of complete and real-time information on the Venezuelan migrant population that is in an irregular migratory condition in Colombian territory, generates a negative economic impact on the State's resources, a situation impossible to foresee due to the lack of planning mechanisms and design of strategies to facilitate access

⁹³ Participants 3 and 4.

¹¹⁶ *Application scope. The Temporary Statute of Protection for Venezuelan Migrants Under the Temporary Protection Regime applies to Venezuelan migrants (...)* 3. *Being in Colombian territory irregularly as of January 31, 2021 (...)* Article 4 D. 216/2021.

to the institutional offer, to guarantee their fundamental rights in a programmed and orderly manner.’ D. 216/2021 Considerations. pp. 11.

Therefore, the legitimacy and the positive views around the TPS’ are uncontested (Moreno 2021; Espitia 2021; Rodríguez 2021). According to all the participants in the research, it assures access to fundamental rights in Colombia, in which lacking legal permanence was the main barrier for Venezuelans to access health, education, work, etc. Furthermore, the posterior resolution (R. 971/2021) that developed the Statute stated it in more clear terms after the observations made by the civil society organizations regarding the TPP or the so-called ‘plastic’ colloquially. In the words of a civil society member:

‘For us it was key that there would be clarity about the legal nature of the temporary protection permit [TPP], then that it be clear that if it served to join the health system, the pension system, be able to work, validate degrees, be able to enter higher education, study in SENA¹¹⁹, open a savings account; So we made a proposal for articles and that was included in the resolution that developed the decree, so in that sense it was positive, it was also clarified that the application of the permit would have no cost because at first it was not clear that, those were the issues that they listened us.’¹²⁰

Nevertheless, the divergences come when asked to involved actors about to what degree are present the humanitarian relief and human rights protection approaches in the TPS. The TPS’s text has both approaches triggered from the ambiguities regarding Venezuelans status as ‘migrants’ and ‘refugees’ in Colombia. For government officers, international organizations’ members, and some experts and civil society members, it is evident the human rights nature of the TPS due to its provision of an identity document. The so-called ‘plastic’¹²¹ allows existing and has legal personality in Colombia and protects children and adults from human trafficking and slavery or worker exploitation¹²². According to the theory and the interviewees¹²³ (Barnett 2012; Cubie 2017), this is a point of convergence and continuity within humanitarian relief and human rights protection.

This point acquires relevance in the Colombian national and subnational settings, in which more Venezuelans are victims of crimes, gross violations of human rights, and IHL violations.

¹¹⁹ Servicio Nacional de Aprendizaje (National Service for Apprenticeship).

¹²⁰ Participant 2.

¹²¹ ‘Legal nature of the Temporary Protection Permit (TPP). It is a (...) identification document, which authorizes Venezuelan migrants to remain in the national territory under special conditions of migratory regularity (...).’ Article 11 D. 216/2021.

¹²² ‘(...) Among them are the right to life and personal integrity; the ban on deals inhuman or degrading; the prohibition of slavery, servitude and human trafficking; the right to marry and the protection of the family; the rights of the child and to protection by their family, society and the State.’ D. 216/2021 Considerations. pp. 1.

¹²³ Participants 3, 4, 5 and 6.

The TPS enables these conducts to be denounced and included in the Unique Registration of Victims for redressing purposes.¹²⁴

However, international organizations, and some members of the civil society, and experts are more gingerly. They point that the statute is a regularization measure with gaps regarding human rights that requires a solution. These gaps are: (i) strengthening the institutional coordination to design and implement a policy that guarantees ESCER for Venezuelans in Colombia¹²⁵; (ii) limit the highly discretionary powers of the migratory authority in the TPS's application¹²⁶; and (iii) the de facto non-substitution of the refuge system through the TPS implementation¹²⁷. In the following lines, I will focus on the gaps regarding the social policy or the ESCER derived from the TPS's text.

Even if access to ESCER is one of the TPS and the TPP objectives, these rights are not mentioned in the articles that develop the TPS's considerations part. The ESCER appear like a possibility in design after the information collected through the registration process and the socio-economic survey:

'Purpose of the Unique Registration of Venezuelan Migrants. The purpose of this Registration will be to collect and update information as an input for the formulation and design of public policies (...).' Article 6 D. 216/2021.

In contrast, there is an emphasis on access to the job market and bank and private transactions in the TPS's texts (bellow) and migratory officer's speeches¹²⁸, which comes from and reinforce the economic subjectification of the migrants mentioned in the section above:

'Legal nature of the Temporary Protection Permit (TPP). It is a mechanism (...) to exercise during its validity, any activity or legal occupation in the country, including those that are developed by virtue of a relationship or employment contract, without prejudice to compliance with the requirements established in the Colombian legal system for the exercise of regulated activities.' Article 11 D. 216/2021.

Thus, even with the ambiguities, the migratory approach in the TPS emphasizes rights that highlight the economic or productive capacity of Venezuelans, confirming the theory around humanitarian measures that, instead of adopting durable solutions, seek to create capabilities to survive within the crisis (Hilhorst 2018; Crock and Bones 2015; Ineli-Ciger 2019; Jutvik and Robinson 2020). It is proved when most of the research participants answered that the TPS is a

¹²⁴ Participants 1, 3, 4, 5, 6 and 7.

¹²⁵ Participant 3, 6, 8 and 9.

¹²⁶ Participants 1, 2 and 7.

¹²⁷ Participants 1, 2, 7, 8 and 9.

¹²⁸ Participant 3.

first step but not enough for the Venezuelans integration in Colombia.¹²⁹ Here, even migration officers recognize that is missing the building of the socio-economic policy¹³⁰. From the experts and international organizations' views, it is also necessary to strengthen the local capacities for providing access to rights such as health¹³¹.

Besides, experts, civil society, and diaspora members point out that complementary measures to the TPS are required: protection against violence, pedagogy about the TPP validity, non-discrimination or anti-xenophobia campaigns, and human rights education for the public officers in charge of migratory issues¹³². Those are not foreseen in the TPS text and will be dependent on other legal frameworks recently uttered in Colombia (e.g., D. 1185/2021 that creates the Office for the Attention and Socio-Economic Integration of the Migrant Population, and L. 2136/2021 that traces guidelines for Integral Migratory Policy).

In addition, the exercise of discretionary powers is crosscutting in the TPS's text and one of the issues of more concern for civil society organizations, experts, and even some public servants because they introduce a securitization approach that undermines the protection expected¹³³. Clauses related to the biometric data collection (art. 8 D. 216/2021; Fundación Karisma 2021), protection endurance (paragraph art. 2 D. 216/2021), the permanence in Colombia proof standard (paragraph 2, art. 4 D. 216/2021), the due legal administrative procedure in case of rejection (paragraph 2, art. 12 D. 216/2021) or the TPP's cancelation (paragraph, art. 15 D. 216/2021), and sanctions such as expulsion and deportation (art. 12 D. 216/2021.). Therefore, the Colombian TPS design is far from assuming securitization and contention approaches (Crock and Bones 2015; Hintjens et al. 2021). However, the risk of creating 'unchecked controls over lives of 'other people' (Crock and Bones 2015)' is there unless Migratory Authorities adopt a human rights-based approach and set limits to the discretionary powers.

Finally, relate to the complementary nature of the TPS to the refuge system in Colombia, the refuge system in Colombia, regulated in the D.1067/2015, has barely changed, although the international protection demands of Venezuelans. On the contrary, the situation has exposed all the challenges of the existing system (Mayorquin 2019; Moreno and Pelacani 2021). Furthermore, many interviewees from civil society organizations and experts agree that the ambiguity about the asylum seekers' possibility to work dissuades them from opting for or continuing with the refuge solicitude procedures¹³⁴. This system can be equal to a deserving/non-

¹²⁹ Participants 1, 2, 5, 6, 7 and 8.

¹³⁰ Participants 5 and 9.

¹³¹ Participants 6 and 8.

¹³² Participants 1, 7 and 8.

¹³³ Participants 1, 2, 7 and 9.

¹³⁴ Participants 1, 2, 7 and 9.

deserving binary (Jorgensen 2012), which pushes people towards the TPS's assumptions and implications. The restrictive refugee systems are a common trend in the world (CIGI 2018).

The ten years of the Colombian TPS's validity¹³⁶ undoubtedly is attractive and unprecedented. The average TPS durability is around five years (Ineli-Ciger 2019). But far from generosity, this is a case of competing views about Venezuelans' representations in Colombia and their consequent measures. It is about pragmatism regardless of the particular, agentic (Bacchi and Goodwin 2016), and well-intended views of the public officers about the TPS's duration. The reasons behind this time included, according to the interviewed officers: the willingness of Venezuelans to stay in Colombia regardless of possible changes in the home country within a volatile context¹³⁷, to bind future administrations¹³⁸, and finally, that Venezuelans could achieve the transit to the ordinary migratory system for obtaining Colombian nationality¹³⁹.

The question for future academic endeavours will be if the market approach is enough to govern refugee and forced migration crises in violent and weak-institutionalized settings as Colombia, which is a question about the implementation rather than the formulation. From the formulation perspective addressed in this research, the Colombian TPS entails more duration, a burdens-based approach to access rights, highly discretionary powers exercise, and a parallel system to the refugee one, rather than complementary.

The above implies humanitarian responses going beyond the classical approach and are more related to human rights protection or non-orthodox humanitarianism (Barnett 2012; Hilhorst 2018). However, they are limited to neoliberal assumptions and capabilities creation (Hilhorst 2018) and, paradoxically, risk human rights because of the high discretionary of the executive and the non-complementarity with the refugee system (Ineli-Ciger 2019). Durable solutions and ESCER, as promoted in the WHS's nexus view (2016), are not derived directly from the TPS despite its destination for forced migrants and refugees (Cubie 2017; Nguya and Saddiqui 2020). But they could be in the spectrum if the refugee system is strengthened and other strategies for Venezuelans integration into Colombian society are implemented. It should imply awareness about re-emerging violence and sub-national settings.

¹³⁶ *Validity of the Statute. The (...) Regime will have a validity of ten (10) years.* Article 2 D. 216/2021.

¹³⁷ Participants 3 and 5.

¹³⁸ Participants 3, 5 and 9.

¹³⁹ Participant 9.

Chapter 6. Conclusion: The Colombian TPS for Venezuelans a market-driven solution

This research paper inquired about the TPS for Venezuelans in Colombia (D. 216/2021) formulation from the theoretical perspective of the nexus between humanitarian relief and human rights protection (WHS 2016) as a political arena (Hilhorst and Jansen 2010) and the methodological approach of ‘What the Problem is represented to be?’ (Bacchi and Goodwin 2016). In other words, it explored how the policy problem was constructed or delimited over other conceivable representations to produce the TPS as a suitable policy solution. It implied to analyse how Venezuelans are represented (Jorgensen 2012; Hintjens et al. 2021) within the ‘local’ political arena to design responses that finally ended with the TPS’s adoption as an implication, within the whole range of other possible humanitarian responses: from classical humanitarianism to human rights-based ones.

Therefore, I delved into the competing assumptions and representations surrounding ‘Venezuelans,’ the underlying presuppositions or motivations, which are expressed as implications in the TPS’s text and through the voices of the actors involved in the policymaking within the political arena. It enabled me to comprehend the TPS’ scope within the nexus between humanitarian relief and human rights protection.

The **competing representations and assumptions around Venezuelans**, in the TPS, were beyond the binary ‘migrant/refugee.’ Both categories are present in the TPS are deployed according to the internal or external demands. For the external level, the term ‘refugee’ is used for fund raising in the Global-North and, as stated in theory, this induces to a ‘commodification’ of the Venezuelans (Freier et al. 2021). For the internal level, the approach assumed is a ‘migratory’ one, which not only reinforces the Colombian government’s predominance in the political arena, but also enables to introduce the binary ‘regular/irregular migrant’ regarding Venezuelans.

Following the theory, this binary consists of burdens or requirements that migrants must fulfil to be deserving or not of the State’s protection (Jorgensen 2012; Crock and Bones 2015; Bacchi and Goodwin 2016; De Hass in Hintjens et al. 2021). In Colombia, it has translated in terms of ‘beneficiaries’ as a correlate of the government’s ‘generosity’, and a ‘visibility/invisibility’ binary. So, those that do not fulfil the TPS’s requirements or are out of its scope are not necessarily objects of persecution or securitization. But, anyhow, they are ‘invisible’ for the State’s protection or cannot be ‘beneficiaries’ of the so-called ‘plastic’ (the TPP). To sum up, as in theory, other than legal categories, the Venezuelans in Colombia has turned into

referent or power-knowledge objects (Hintjens et al. 2021), triggering a process of subjectification (Foucault in Bacchi and Goodwin 2016).

The **underlying presuppositions** or **motivations** of the Colombian government for adopting the TPS emerged within a political arena, in which there are no more legal bidding instruments for the protection of refugees and forced migrants than the 1951 Convention relating to the status of refugees, neither globally nor regionally. Thus, the considerations were highly dependent on regional and binational relations, in which there is evident the lack of regional agreements and diplomatic relations between Colombia and Venezuela. In this scenario, Venezuelans fleeing are neglected or instrumentalized by the home country and objects of securitization in most of the countries in the region.

Then, Colombia has turned into the first host country of Venezuelans. But the recently formulated TPS, far from obeying just ‘generosity,’ was the product of pragmatism around (i) the external reputation of the Colombian government for fundraising, (ii) the inefficiency of the former measures adopted in Colombia to regularize Venezuelans (e.g., the PEPs), and (iii) the market-driven ways to handle the crisis. Thus, beyond the elements that are part of the pragmatism for the adoption of TPS in theory: massiveness, regional disagreements, xenophobia, political opinion, and limited capacities (Roxström and Gibney 2003; Durieux 2014; Ineli-Ciger 2016; Crock and Bones 2015), the ‘local’ political arena highlights the three motivations above listed.

The **implications**, expressed in the contents and procedures stated by the TPS and emerged from the representations, assumptions, and presuppositions above explored, derived in the inclusion of both approaches: humanitarian relief and human rights. Thus, there is no dissensus around the TPS as a tool that facilitates Venezuelans in Colombia access to rights and guarantees access to documentation or legal personality in the country. It is a significant step for children protection and the protection of Venezuelans from human trafficking or other risks for life, integrity, and freedom, which in consonance with theory, are issues in the core intersection between humanitarian relief and human rights protection (Barnett 2012; Cubie 2017).

But when it has to do with how Venezuelans could access rights, the disagreements with the government and the TPS’s text arose. Like theory suggests, the migratory approach predominance has triggered the TPS as a humanitarian response that, despite the inclusion of human rights elements, reinforces the creation of individual capabilities approach, under a neoliberal perspective, leaving durable solutions in abeyance (ESCER) (Crock and Bones 2015; Hilhorst 2018; Ineli-Ciger 2019; Jutvik and Robinson 2020; Neumayer in Freier and Gauci 2020).

For international organisations, civil society, and some diaspora members, it is required to address serious gaps left by the TPS as the core measure for Venezuelans in Colombia.

Otherwise, the access to rights would be purely nominal or limited to obtaining an identity document, the so-called ‘plastic.’ More, when it is recognized that Venezuelans will stay in the country permanently. These gaps are: (i) not only in the design of a policy to guarantee access to ESCER¹⁴⁰ but also to strengthening local capacities and infrastructure to accomplish it; (ii) limit the discretionary powers in the head of the Migratory Authority¹⁴¹; and (iii) to strengthen the refuge system in the country to make it complementary to the TPS¹⁴². These aspects coincide with the critiques scholars have already done to other TPS in the world, beyond each case particularities (Crock and Bones 2015; Ineli-Ciger 2019).

All above allows me to answer my main research question regarding how the representation shaping or the construction of the policy problem oriented the TPS formulation. It involved solving sub-questions regarding how the representation of the ‘Venezuelans’ in Colombia has informed or implicated the presuppositions or motivations behind the TPS adoption. Those motivations inform the TPS’s contents in terms of humanitarian relief and human rights protection approaches’ incorporation. Thus, the emphasis on the migrant condition in the internal speeches gave more manoeuvre margins to the Colombian State to design the policy based on market or capabilities approaches. Then, Venezuelans are right holders based on their economic contribution to Colombian society. The Colombian TPS for Venezuelans, far from a durable solution, has turned into the pragmatic solution applicable for refugees and forced migrants by naming ‘them’ and reinforcing their subjectification as ‘migrants’ or ‘economic burdens holders.’ Hence, the TPS observes human rights elements that converge with humanitarian relief aspects. However, it leaves unsolved questions regarding the human rights issues above listed.

Those unsolved questions could reflect other ways of representing the crisis and the policy problem, which were not addressed in the TPS formulation. Beyond the refugee or forced migrants condition recognition, it implies acknowledging that Venezuelans are embedded in and not segregated from the Colombian national and sub-national contexts. In those contexts, they require proactive protection from poverty and violence, engaging local communities in the solutions.

After conducting this research, my positionality regarding the Venezuelans’ refugee and forced migrant condition recognition has been nuanced. Although I seek to highlight the protective element in these labels, I am also aware of their risks. They might reproduce the logic of turning Venezuelans into referent objects, imposing burdens and binaries of ‘deserving/non-deserving’ within a system that might not necessarily guarantee economic inclusion for refugee and forced migrants in Colombia. Nonetheless, this does not make the TPS market-based approach enough. The human rights issues here stated should be solved.

¹⁴⁰ Art. 6 D. 216/2021.

¹⁴¹ Art. 2, 4, 8, 12 and 15 D. 216/2021.

¹⁴² Art. 16 and 17 D. 216/2021.

This research does not seek to represent the views of Venezuelans now living in Colombia. Then, further research will be required once the TPS is fully implemented, from an ethnographic perspective about the subjectification processes and the impacts of the TPS for inclusion in the Colombian society. Consequently, the current investigation opens the door for future research agendas regarding (i) the policies analysis from below or through an ethnographic exercise in the field with the Venezuelans settled in Colombia, recognizing the class, gender, ethnicity, among other differences; (ii) suitable and feasible durable solutions from below and including the host communities; and (iii) the role of diasporas in the peacebuilding. For now, additional investigation can advance the knowledge on the implementation of the new legislation emerging destined for migrants and refugees in Colombia, for example, the one related to the creation of the Office for the Attention and Socio-Economic Integration of the Migrant Population (D. 1185/2021).

This research contributes to reflecting on governance and policymaking around humanitarian crises in Latin America and how the nexus within humanitarian relief and human rights protection is not a standard formula. Within specific political arenas, people's and the problem's representations outline the measures adopted that in advance are performed from dominant approaches. Durable solutions might be ideal and the standard formula for refugees and forced migrants' crises. But the depiction of these populations as just economic migrants has triggered pragmatism and sovereignty exercise within the political arena, which made TPS a solution in Colombia. In addition, the more common representation and construction of the social problems as 'humanitarian emergencies' call attention to the State's strategies to govern those problems. This 'emergency' approach allows wide ranges of discretionary powers and generates important protection gaps. These might remain unaccountable in the name of the 'exceptionality' and the 'emergency responses.' They might hide how policies by themselves create precarization or dehumanization systems. Nonetheless, this could change in the future, as open-ended stories, written by different actors according to power relations and policy-workers reflexivity as suggested by Bacchi and Goodwin (2016).

While I was writing this paper, in the same border in which the problem and questions here explored emerged, two Venezuelan boys, one of twelve, the other of eighteen, were murdered by one of the armed actors present in the region. They were accused of being thieves. The case resonated in media because it was a typical private justice exercise, and the boys were recorded hours before their bodies were found dead in a road (Acevedo 2021a; The Guardian 2021). It is a paradox when the TPS precisely seeks to address Venezuelan children and life protection¹⁴³. It precisely proves how before obtaining the TPP, Venezuelans remain 'invisible' or outside from the State protection. They do not exist as rights subject.

¹⁴³ D. 216/2021 Considerations. pp. 1.

One research participant told me: *'This is just one of the problems we have in Colombia,*¹⁴⁴ to explain how difficult it was to pose the 'Venezuelans' issues in the national agenda. Thus, I question: what would happen if the interconnections among all the problems were foreseen? Should not the policymaking address all those connections? Could it not be this also an opportunity to build peace in the borders? Hopefully, new legal and social developments can raise a suitable policy with new representations and frameworks for the problem. This research is one more steppingstone from which we can keep addressing these questions.

¹⁴⁴ Participant 8.

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Appendix I. Information sheet – Spanish version

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Proyecto de investigación	El nexo entre la asistencia humanitaria y la protección a los derechos humanos en el Estatuto Temporal de Protección para venezolanos en Colombia
Institución	Instituto Internacional de Estudios Sociales -ISS- Erasmus University Rotterdam
Investigadora	Juliana Poveda Clavijo
Datos de contacto	551358jp@eur.nl +31 623 99 27 75
Supervisor	Rodrigo Mena Fluhmann
Datos de contacto	mena@iss.nl

¿Cuál es el objeto del proyecto de investigación?

Explorar en el recientemente adoptado Estatuto de Protección Temporal -ETP- para los venezolanos en Colombia (D. 216/2021) los puntos en común y las tensiones entre los enfoques de ayuda humanitaria y garantía de los derechos humanos. Para ello, tomaré como marco teórico el ‘nexo’ (World Humanitarian Summit 2016) y el análisis post-estructural de políticas como método (Bacchi and Goodwin 2016).

¿Qué persigue esta investigación?

- Establecer los aspectos positivos, retos y/o vacíos de este instrumento para enriquecer el debate en torno la formulación de políticas para la protección de los migrantes y refugiados venezolanos en Colombia.
- Hacer transparentes los procesos de toma de decisión de los actores involucrados en las políticas de protección a migrantes y refugiados en Colombia.
- Aportar desde la experiencia de Colombia a la literatura académica que explora los factores que inciden en la adopción de medidas de protección temporal para migrantes y refugiados, así como a la literatura sobre el nexo entre la asistencia humanitaria y la protección de derechos humanos.

- Poner en práctica las destrezas de la investigadora para completar su Maestría en Estudios del Desarrollo, énfasis en Derechos Humanos, Género y Estudios de Conflicto.

¿Quiénes participan de la investigación?

Miembros de organismos internacionales, instituciones públicas colombianas y de la sociedad civil concernidos con la adopción e implementación del ETP, que a través de su conocimiento y experiencia pueden dar cuenta sobre los presupuestos y procesos que informaron la expedición del ETP.

¿Es obligatoria mi participación?

No. La participación es completamente voluntaria. En caso de aceptar participar, se compartirá un formato de consentimiento informado, en el que se detallará cómo la información solicitada será recolectada y empleada. De cualquier modo, aun habiendo aceptado participar, es posible que usted suspenda de manera motivada su participación.

¿Cuáles son los pasos por seguir si acepto participar?

Una vez firmado el consentimiento informado, se concertará una entrevista remota a través de las plataformas Zoom, Skype o Teams, en el día y la hora de su conveniencia. La entrevista durará alrededor de 60 minutos. La grabación será solo de voz. En caso de no aceptar esta grabación, se solicitará autorizar la toma de notas para dejar registro de sus respuestas.

¿Qué clase de preguntas me serán formuladas?

No se harán preguntas personales o relativas a aspectos sensibles para la entidad a la que pertenece. Se preguntará sobre sus percepciones a cerca de los presupuestos y procesos que informaron la adopción del ETP, así como sus posibles implicaciones.

¿Puedo desistir de mi participación en la investigación después de la entrevista?

Sí. Para hacerlo puede contactar a la investigadora a través de los datos arriba referidos. Su entrevista no será incluida en el análisis y la grabación será borrada inmediatamente.

¿Qué se hará con la información que aporte en el marco de la entrevista?

Los registros -grabaciones y notas- de las entrevistas serán codificados para el análisis, con posterioridad serán anonimizados. Solo tendrán acceso a estos registros la investigadora y su supervisor. Estos serán almacenados con claves en plataformas digitales seguras y serán borrados en un lapso de 3 años tras el inicio de la investigación.

Appendix II. Informed consent – Spanish version

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Consentimiento informado

Gracias por considerar hacer parte de esta investigación. Este consentimiento se suscribe después de haber recibido todas las explicaciones pertinentes acerca del proyecto por parte de la investigadora. Si tiene más preguntas derivadas de la hoja informativa o de las explicaciones recibidas, por favor no dude en consultar a la investigadora antes de decidir sobre su participación. Usted recibirá copia de este consentimiento informado para sus archivos y para hacerlo válido en cualquier momento. Así mismo, se hará una copia del documento traducida al inglés para efectos de soporte de la investigación y archivo.

Al llenar o tachar cada recuadro, entiendo que estoy consintiendo los aspectos específicos abajo enunciados sobre la investigación. Al no hacerlo, entiendo que NO estoy consintiendo dicho aspecto del estudio. En consecuencia, entiendo que, al no dar mi consentimiento sobre alguno de los elementos de la investigación, mis aportes pueden ser excluidos de la investigación.

1.	Confirmando que he leído y entendido los contenidos de la <i>Hoja Informativa</i> sobre el proyecto de investigación. Confirmando que he tenido la oportunidad para considerar la información allí provista y lo que se espera de mi en la investigación. Confirmando que he tenido la oportunidad de hacer preguntas, las cuales me han sido resueltas a satisfacción, y por ello desearía participar de la investigación a través de una entrevista individual.	<input type="checkbox"/>
2.	Entiendo que podré retirar la información por mi aportada a la investigación hasta el 10 de noviembre de 2021.	<input type="checkbox"/>
3.	Entiendo que la información y datos recolectados en este estudio serán guardados de manera anónima y segura. No será posible identificarme en ninguna de las publicaciones posteriores.	<input type="checkbox"/>
4.	Entiendo que ninguna clase de información personal o sensible para la organización o la entidad a la cual pertenezco será recolectada en esta investigación.	<input type="checkbox"/>
5.	Entiendo que mi participación es voluntaria y que soy libre de desistir de ella en cualquier momento. Entiendo que, si desisto, cualquier información por mi provista será eliminada, a menos que consienta lo contrario.	<input type="checkbox"/>

6.	Entiendo que solo podrán tener acceso a la información por mi aportada en el marco del presente estudio, la investigadora y su supervisor.	<input type="checkbox"/>
7.	Entiendo que la información recolectada a lo largo del estudio estará disponible después del 20 de noviembre de 2021, una vez la información y los datos sean anonimizados y procesados. Entiendo que NO habrá ninguna clase de compensación material para la investigadora por este ejercicio académico, ni para mi como entrevistado.	<input type="checkbox"/>
8.	Entiendo que NO recibiré beneficios económicos derivados de esta investigación o de cualquier otro resultado que esta tenga a futuro.	<input type="checkbox"/>
9.	Entiendo que esta investigación está financiada con recursos propios de la investigadora y la beca parcial COLFUTURO, que en ningún momento comprometen la independencia de la investigadora.	<input type="checkbox"/>
10	Entiendo que la información que aportaré a la investigación podría ser publicada como parte del reporte final del estudio y que puedo solicitar copia de este reporte, si así lo deseo. Sí <input type="checkbox"/> No <input type="checkbox"/>	<input type="checkbox"/>
11	Consiento que mi entrevista sea grabada en audio <input type="checkbox"/> y/o a través de notas <input type="checkbox"/> y entiendo que las grabaciones y notas serán destruidas después de tres (3) años tras el inicio de esta investigación.	<input type="checkbox"/>
12	Entiendo que NO se prevén riesgos físicos, legales o económicos derivados de mi participación en el presente estudio. Sin embargo, entiendo que no estoy obligado a responder aquellas preguntas que no desee responder.	<input type="checkbox"/>
13	Sé a quién debería contactar en caso de que desee exponer un inconveniente o queja (Ver datos de la investigadora y su supervisor compartidos en la hoja informativa).	<input type="checkbox"/>

Confirmando que entiendo que, al firmar a continuación, doy mi consentimiento para los elementos del estudio mencionados anteriormente. Entiendo que, al no dar mi consentimiento para cualquier elemento, se me puede considerar no elegible para el estudio.

Nombre del participante

Fecha

Firma

Investigador

Fecha

Firma

Appendix. III. Venezuelans in Colombia within the violence, poverty, and xenophobia, some figures.

The benchmark of the Venezuelan fleeing from the Colombian perspective was 2015, when, likewise, Colombian refugees and asylum seekers settled in Venezuela were expelled massively from the country. There was political tension due to the expelled Colombians, but also the political and socio-economic crises inside Venezuela turned prominent for the international community eye. The numbers of Venezuelans fleeing turned massive (Observatorio de Venezuela 2018: 9; Moreno and Pelacani 2021).

Although many Venezuelans started fleeing because of political persecution and economic fluctuations and hardship, since 2012 (Vivas and Paéz 2017: 13-14), it is relevant to notice the differences between those who could afford to go out earlier and those who did in the following years. Class, motivations, and countries of destination change through time and mark trends (Vivas and Paéz 2017: 2). In terms of one of the research participants: *‘Those who go out at the end are the most vulnerable ones (...) It is curious how the first Venezuelans were called ‘ex-pat’ and even investors [in Colombia], but the ‘migrants’ humanitarian crisis’ began when the poor ones arrived.*¹⁴⁵

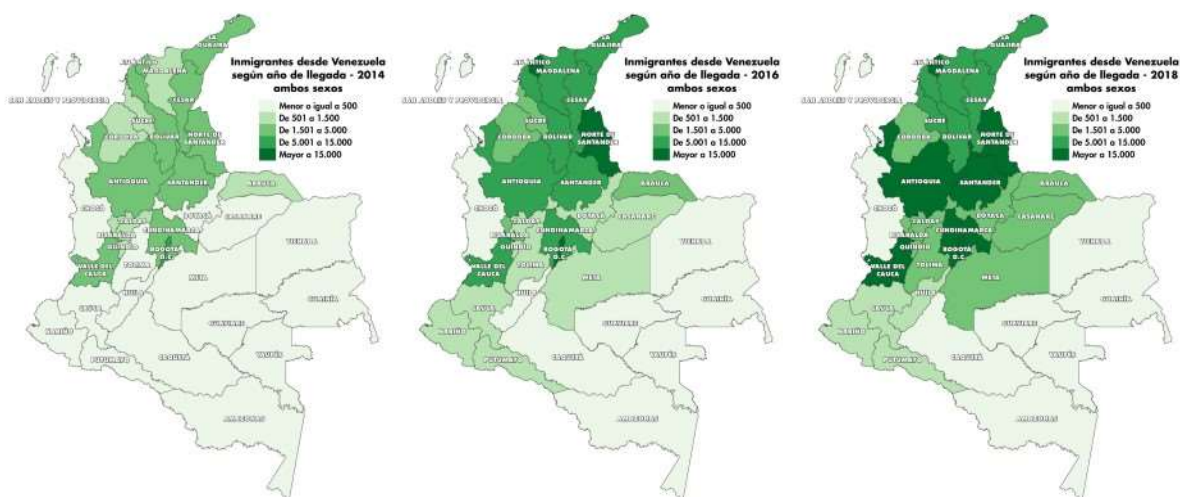
Colombia is the last stop for those who started to cross the border in 2015. Most of them are low-income populations from all regions of Venezuela; most of them, affected by lack of food, health attention, basic income, public services, insecurity, and ‘political hopelessness’ (Vivas and Paéz 2017: 2). The domestic situation that has received Venezuelans in Colombia is characterized by a lack of implementation of the peace agreement with the FARC guerrilla and emerging social discomfort with the socio-economic inequalities within the country.

The challenges for the peace agreement implementation are reflected in an increasing number of murders of social leaders and FARC ex-combatants. In addition, there is a recycle of violent dynamic around the illegal economies. It is visible through the increasing number of massacres (ICG 2018, 2019, 2020, and 2021a) and massive events of internally forced displacement after the peace agreement. The latter has increased by a 135% in comparison with 2020 (CIDH 2021). Besides, the pandemic exacerbated and exposed inequalities that triggered the massive strikes in May 2021. The deployment of arbitrary and excessive force to respond to the protests worsened the situation (OHCHR and OAS 2021). Therefore, there is a deep internal legitimacy crisis of Duque’s government and urgent demands of the Colombian population to cope¹⁴⁶.

¹⁴⁵ Participant 1.

¹⁴⁶ This set of interviews was made before the re-opening of the international bridge Simón Bolívar and the announcement of a possible re-establishing of the consular relations between Colombia a Venezuela on the 4th of

Meanwhile, Venezuelans has been settling mainly in the cities of Bogotá, Cúcuta, Barranquilla, Medellín, Cartagena, Bucaramanga, and Cali¹⁴⁷. There, they are exposed to socio-economic inequality, xenophobia, and armed control in the urban peripheries (CODHES 2020 and 2021). Nonetheless, other regions also are in the list of destinations such as Arauca, Norte de Santander (Catatumbo), Cesar y La Guajira in Colombian-Venezuelan border; Santander (Magdalena Medio), Antioquia (Occidente Antioqueño and Bajo Cauca) in the country interior; Chocó and Valle del Cauca in the Pacific Region; Nariño in the South-Pacific Region and the Colombian-Ecuadorian border; Putumayo in the Amazonia and Colombian-Peruvian border. In the map below, these locations are illustrated:



Map 1. Venezuelans’ regional location in Colombia, map taken from DANE- CNPV (2021).

In these regions, the lack of implementation of the peace agreement has also turned the Venezuelan migrants and refugees into victims of the emerging new cycles of violence. Structural factors and vulnerabilities are combined (CODHES 2020: 23-31; Espitia 2021)¹⁴⁸. International actors also recognize how Venezuelan refugees and forced migrants are victims of internal displacement within Colombian boundaries¹⁴⁹. According to national NGO CODHES’s research, between 2015-2020, Venezuelan migrants and refugees have been victims of gross violations of human rights. Over 6771 victims, the main aggressions are sexual violence (35%),

October of 2021 (El Espectador 2021a). Nonetheless, it is premature to assess this re-opening as a normalization of the relationships between the Colombian and Venezuelan States.

¹⁴⁷ Participant 4.

¹⁴⁸ Participants 1, 2, 3 and 6.

¹⁴⁹ Participant 6.

homicides (29%), forced displacement (23%), forced disappearance (12.5%), and forced recruitment (0.5%) (CODHES 2021). The places highlighted by CODHES and other participants in the research as risky for Venezuelans are Bogotá, Barranquilla, Cartagena, Medellín, Puerto Carreño, and Tumaco but also, generally speaking, the Colombian-Venezuelan border¹⁵⁰ and the Colombian Pacific region¹⁵¹ (CODHES 2020 and 2021).

As one participant accurately summarized: *‘[every] zone in which there is territorial control by irregular groups, of any kind, since it has [to exist special protection for Venezuelans]’*¹⁵². In that sense, it is not that ‘Venezuelans’ as a collective are involved in criminality. Or, in a stigmatizing way, ‘they’ bring insecurity. The fact is that they are used and victimized by the existing criminal phenomena in Colombia (Mantilla in Pardo 2021). Nevertheless, the TPS’s seems to be confusing in this regard. Despite its aims to protect Venezuelans from crime, it also can reinforce a stigmatizing view by pointing out the increase of young Venezuelans under the Youth Criminal Responsibility System as a motivation¹⁵³.

Now, though the pandemic triggered some returns of Venezuelans from Colombia, those are seriously queried for being ‘non-voluntary’ and the product of the lack of response and discrimination from the Colombian authorities (Moreno and Pelacani 2021: 199-205). The pandemic and its pressure over the Venezuelan health system exacerbated the transborder movement; that continues towards Colombia, regardless of if it is pendular, transit, or for permanence. What happened is that during the COVID-19 pandemic the official system did not trace the cross-border movements through the irregular paths between Colombia and Venezuela (Rodríguez 2021).

As well, recent figures and some participants have revealed how poverty impacts differentially and disproportionately the Venezuelans in Colombia¹⁵⁴. They are affected mainly by a generalized lack of access to health (90%), income generation (70%), overcrowding in the housing, and risk of being evicted (51.6%) (DANE- 2021; GEIH-DANE in Observatorio Proyecto Migración Venezuela 2021; El Espectador 2021), especially in the Caribbean Coast (Acevedo 2021).

On the top, xenophobia appears to be increasing in the last years in all layers of Colombian society, according to all the participants and recent studies (OXFAM 2019; Barómetro de Xenofobia 2021). It is evident in daily relationships in which the ‘Venezuelans’ are otherized,

¹⁵⁰ Participants 1, 2 and 6.

¹⁵¹ Participant 3 and 6.

¹⁵² Participant 7.

¹⁵³ *‘That (...) in the period comprised 2015 to 2020 (...) 1,189 Venezuelan adolescents and young people, from 2016 to 2020 have entered the Adolescent Criminal Responsibility System (SRPA).’* D. 216/2021 Considerations. p. 14.

¹⁵⁴ Participant 1, 2, 5, 6, 7, 8 and 9.

discriminated and stigmatized. For the Colombian population, the word ‘migrant’ turned into an expression charged with xenophobia to refer to Venezuelans, while other nationalities or upper-class ones are considered ‘expats’ or ‘foreigners’ (Ospina 2021). The aporaphobia implicit in the ‘Venezuelan migration’ is a factor that increases the perse vulnerability of this population (Cortina in CODHES 2020)¹⁵⁵.

Similar, local authorities and the president have expressed on different occasions discriminatory statements. Two of the most resonated in the public opinion came from the Bogotá Mayor, who established the necessity to create a police body specific for the criminality generated by the ‘migrants,’ (France24 2021) and the other arose from the president Iván Duque, who months before launching the TPS, announced that Venezuelans would not have access to COVID-19 vaccination in Colombia (The Guardian 2020)¹⁵⁶.

¹⁵⁵ Participant 1.

¹⁵⁶ Participants 3, 4, 6, 7 8 and 9.