

## **Discrimination by omission? Assessing migrants and refugees' in/exclusion in the political-institutional response to COVID-19 in Brazil**

### **Theoretical Background**

In the past twenty years, the Latin America and the Caribbean (LAC) region, has been marked by a move towards a progressive discursive and policy agenda regarding international migration and refugee protection. In particular, many states – especially in South America – have taken steps, nationally and/or regionally, to support free movement and the equal treatment of non-nationals, rejected the criminalisation of human mobility and passed human rights-based migration legislation (Acosta, 2016, 2018). This ‘paradigm shift’ towards a more liberal approach to migration governance in LAC can be explained by a multiplicity of factors such as the political left-of-centre ‘pink tide’ that swept across the region at the turn of this century, its changing migration dynamics as a place of origin, destination and transit for intra and extra-regional migrants, as well as country-specific political and social processes such as having a sizable emigrant population, demands from organised civil society, and key actors’ particular political ideologies and interests (Acosta & Freier, 2015; Ceriani & Freier, 2015).

Despite the consensus regarding Latin America's transition towards a human rights approach to refugee and migration management, recent scholarship has pointed to some contradictions in the implementation of these legal frameworks, especially with regards to the political-institutional response to recent intra-regional mixed migration flows (Ceriani, 2018). For the most part, governments across the region have overwhelmingly met recent displacement inflows as a temporal contingency, adopting a series of ad-hoc measures that reinforce displacement as an emergency issue (Gandini et al, 2019). In particular, the full implementation of these more liberal laws has been rather heterogeneous across the region, co-existing with selective, instrumental and restrictive management policies and practices, often inherited from past military dictatorships, that translate into discrimination, xenophobia, rights-violations and the curtailment of migrants and refugee’s effective access to social and economic rights (Acosta, 2018; Ceriani, 2018; Ceriani & Freier, 2015). For instance, while Brazil and Uruguay explicitly grant migrants and refugees full access to their social protection systems, in countries such as Chile, Colombia, Ecuador, Mexico and Peru, the state excludes, de jure or de facto, these populations from social protection schemes, often on the basis of their legal migration status (Vera Espinoza *et al.*, Forthcoming).

The COVID-19 pandemic hit the region in a context of socio-economic fragility – with a most countries, especially in South America, displaying low rates of GDP growth and high rates of informality in their labour markets – and an acceleration of, intraregional and extra-regional, migration flows. In response to the pandemic, most countries across the region responded by militarising and/or closing their borders to non-citizens and non-residents (IADB, 2020). This has jeopardised the universal human right to freedom of movement into and out of countries of origin and the safeguarding of countries’ humanitarian protection systems. In addition, asylum procedures, visa and residence permit applications have been suspended or delayed, which has further complicated migrants’ access to documentation. This is particularly problematic, as in many countries most public pandemic mitigation programmes – income support, housing provision, rent subsidies, etc. – exclude undocumented populations (Zapata and Prieto Rosas, 2020).

Migrant and refugee populations across Latin America have been one of the most affected by the adverse health, economic, and social challenges associated with the COVID-19 pandemic (The Lancet, 2020). However, so

far there has been very little in the way of targeted governmental policies to fully guarantee the rights of these populations in the context of the pandemic (Bengochea et al., 2020). As has already been documented, there are indications that the COVID-19 crisis has exacerbated the conditions of precarity and vulnerability of the region's mobile population, given their high rates of job informality and insecurity, overcrowded living conditions, and limited access to health services and social protection (Zapata and Prieto Rosas, 2020). These multiple determinants of vulnerability mean that they are not only more vulnerable to the risks associated with the virus, but that their different levels of inclusion in governmental responses to the crisis across the region, have also deepened pre-existing inequalities and gaps between the migrant and national populations (Vera Espinoza, Zapata and Gandini, 2020).

This scenario urgently demands a better understanding of the impacts of COVID-19 on the effective access and exercise of socio-economic rights of migrants and refugees in key destination countries in Latin America and their prospects for in/exclusion in pandemic and post-pandemic mitigation efforts. While there is a growing body of research exploring the integration of migrant and refugee populations in Latin America and elsewhere (Blouin, 2019), country-specificities and a systematic analysis of their inclusion in the pre and pandemic scenario is lacking.

This paper aims to contribute to filling this gap by analyzing the impacts of the Covid-19 pandemic on the living conditions and effective access of migrant and refugee populations to social protection and other socioeconomic rights in Brazil. This analysis will be developed vis-à-vis the country's legal migration and asylum frameworks and the government's political-institutional response to the pandemic. The paper employs a mixed methodology approach that combines secondary data on the recent evolution of mobility trends and the policies and practices of migration and asylum in Brazil, with qualitative evidence from eleven semi-structured interviews conducted – between June and July 2020 – with key informants, including representatives from national and local governments, Civil Society Organisations, and International Organisations working with migrants and refugees across the country.

## **Data and Research Methods**

This paper draws on a mixed methodology approach that combines i) a review of secondary data on the recent evolution of mobility trends and the policies and practices of migration and asylum in Brazil, with ii) qualitative evidence from eleven semi-structured interviews conducted – between June and July 2020 – with key informants, including representatives from national and local governments, Civil Society Organisations, and International Organisations working with migrants and refugees across the country.

## **Preliminary Findings**

As in other countries in the region, the pandemic arrived in Brazil in a context of social, economic and political fragility and a rise in the number of migrants arriving in the country. On the one hand, in 2019, the country was slowing down – with a GDP growth rate of 1.1% (IMF, 2020) and a had a very high prevalence of informal employment, 47.9% (ILO, 2021). The country has been immersed in an intense socio-political crisis since the turbulent, and for many truculent, impeachment of the president-elect Dilma Rousseff in May 2016. The election of far-right Jair Bolsonaro in October 2018 has, if anything, exacerbated these multiple crises. In this context, it is estimated that the pandemic will produce a 5% contraction of GDP in 2020, higher than the regional average (World

Bank, 2020) and a doubling of the unemployment rate – reaching 23, 8% (Cucolo, 2020). On the other hand, since 2011, Brazil has been going through a change in its migration pattern, both in terms of volume – with the intensification of intraregional flows – and the composition of flows – with a diverse range of countries of origin and migration motivations (Zapata & Fazito, 2018).

Brazil has a modern legal framework in terms of migration and refugee protection. On the one hand, the legal framework regarding mobility is made up of the Refuge Law (9.474 / 1997), which incorporated the 1951 Geneva Convention, its 1967 Protocol and some elements of the Cartagena Declaration into the Brazilian legal system. On the other hand, in 2009, Brazil implemented the Residence Agreement for Nationals of the Mercosur States (Decree 6975), allowing free mobility and residence of citizens of the bloc and associated countries in Brazilian territory (IOM, 2018). More recently, the anachronistic Statute of the Foreigner (1980) was replaced by the new Migration Law (13.445 / 2017), which recognizes migrants as subjects of rights, and promotes the fight against xenophobia and non-discrimination as central principles of migration policy (Zapata & Tapia, forthcoming).

Despite the fact that the New Migration Law represents a significant advance towards the recognition and respect of migrants' fundamental rights, it is evident that the current political dynamics, which have once again given a leading role to the state security apparatus, and the most conservative congress since the country's re-democratization, threaten the effective implementation of this new regulatory framework.

Brazil's current legislation guarantees migrants' and refugees' access to the formal labour market, as well as other socioeconomic rights – education, housing, banking services and social assistance and security – regardless of migration status. Also, unlike other countries in the region, Brazil has a good public and universal health system, also available to migrants “without discrimination on the grounds of nationality and immigration status”. However, the evidence collected for this paper suggests that four main issues stand in the way of migrants' effective access to social protection and other socioeconomic rights. In particular: i) physical distancing measures – mostly led by municipal and state governments through the suspension of non-essential activities – disproportionately affected the migrant population, which is overrepresented in the informal sector of the economy, often in jobs demanding continued exposure to the public; ii) the invisibility of the migration issue in the public and private spheres in Brazil, negatively impacts access to rights by migrants and refugees in the country; iii) despite the state's legal national and international obligations, civil society organisations and control agencies have had a leading role in assisting, defending and protecting the rights of migrants and refugees during the pandemic; and iii) the measures implemented to respond to the pandemic – especially related to (selective) border closures – may further the vulnerability of already vulnerable populations, jeopardise the obligations assumed by Brazil regarding the promotion and protection of human rights and may have profound changes in the country's governance of mobility in the medium and long-term. These issues will be thoroughly developed in the full version of the paper.

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