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Weakening Practices Amidst Progressive Laws: Refugee Governance in Latin America during COVID-19

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ABSTRACT

This paper develops a comparative assessment of the state of asylum in Brazil, Chile, Mexico, and Uruguay. It argues that an accelerated weakening of refugee protection, exacerbated during the pandemic, has taken place across the region. Faced with growing mixed flows, the region's refugee framework has either been used as an *ad hoc* regularization mechanism or not been broadly used. Also, pandemic mitigation measures have further weakened access to asylum, through militarization and border closures, and a platitude of deterrence practices. These regressive practices may result in the *undermining, abandonment and/or replacement* of the region's widely praised refugee governance.

Introduction

The Latin American (LA) region[1] can be characterized by a progressive discursive and policy agenda on international migration and a long-standing commitment to refugee protection, with many states having taken steps, in the past two decades, to reject the criminalization of mobility, support free movement and the equal treatment of non-nationals, and passing human rights-based migration legislation (Fischel de Andrade, 2014; Grandi, 2017).

As a region of origin and recipient of forcibly displaced populations, refugee protection in LA has unique characteristics, in which different regimes and multilevel legal systems coexist, resulting in enlarged spaces of refugee protection (Jubilut et al., 2021). For instance, at the beginning of the 21st century, fifteen LA countries had already incorporated, totally or partially, the expanded definition of the non-binding Cartagena Declaration[2] into their national legislation, and almost all countries in the region had ratified the 1967 Protocol Relating to the Status of Refugees (Zapata & Prieto Rosas, 2020). The human rights overarching approach of the Cartagena Declaration, which has been referred to as the 'spirit' of Cartagena (Jubilut et al., 2019), can be seen in the region's regime of protection based on considering the socio-political situation in the claimant's country of origin rather than on individual threads, as well as regional cooperation and efforts to periodically review the humanitarian approach to protection of displaced populations and other migrants across the region (Jubilut et al., 2021).

However, the recent massive (forced) displacement of people from Venezuela, Central America and Haiti, among other states, has tested this progressive agenda, with states across the region

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broadly responding with an increased securitization of migration management (Brumat & Vera Espinoza, in press), a series of reactive, *ad hoc* measures (Gandini et al.2019; Zapata & Tapia, 2022), and the limited implementation of Cartagena's expanded definition of refugee (Blouin et al., 2020).

Through a comparative analysis of the state of asylum in Brazil, Chile, Mexico, and Uruguay before and during the pandemic, this paper explores to what extent the public health emergency has been used to further weaken refugee protection systems across the region. Drawing on De Lucas' concept of *vaciamiento* –"hollowing out" of asylum systems—and current debates on the "death of asylum" (De Lucas, 2016; Mayblin, 2021; Mountz, 2020), we argue that, even though LA has been praised by its robust and expansive protection framework, an accelerated *weakening of refugee protection* has been taking place in recent years, which has been exacerbated during the pandemic. By the 'weakening of refugee protection' we refer to the increasing regressive implementation of national and regional frameworks, as well as the interrelated (and sometimes interdependent) emergence of legal-technical measures and/or the reinforcement of a series of institutional political practices, which can result in the *undermining, abandonment and/or replacement* of the region's widely praised progressive refugee governance. This weakening can be elucidated through interrelated dimensions that may limit the right to asylum, such as decisions and practices affecting the adequate implementation of the refugee system. In particular, the suspension of the reception of asylum applications and a platitude of deterrence practices including border closures as well as those that limit or impede the right of accessing the territory, deportations and forced returns, among others. The weakening of asylum also manifests through legal dispositions and regulations, such as changes to asylum procedures that cause delays in case resolutions or impose barriers to asylum seekers. Throughout the paper, we show that these policies and practices weakening refugee protection precede the pandemic but were especially exacerbated during the public health emergency.

The paper is structured in four sections. First, we review recent critical scholarship on the hollowing out and the 'death' of asylum as an instrument of international protection. Second, we present the data and methods employed for the analysis, and then discuss the changing dynamics of forced displacement and the functioning of asylum systems in the four country-case studies before the pandemic. Fourth, we unpack the ways in which the pandemic affected the implementation of asylum laws. In the discussion and conclusion sections, we compare and contrast the dynamics we identify in the four country cases and reflect on what this means for the region's future research agenda.

Theoretical framework: the hollowing out and 'death' of asylum

In recent years, scholars have questioned the evasive attitude of various countries of the Global North in the face of increasing refugee flows from the Global South. This phenomenon has been referred to as *vaciamiento* or "hollowing out" of asylum systems (De Lucas, 2016) or even the death of the right to asylum itself (Mayblin, 2021; Mountz, 2020). For De Lucas (2016), this process expresses a clear ethnocentric prejudice since it is occurring precisely when refugees are no longer predominantly European, as was the case in the first half of the 20th century.

De Lucas' argument underlines how the *vaciamiento* takes diverse forms, such as the commodification of the right to asylum which leads to its denaturalization so that, instead of complying with their legal obligations, countries harden the conditions for accessing that right under the banner of controlling public order and fighting terrorism (p.24). This hollowing out is expressed in two dimensions, particularly in the European context. First, a technical-legal one, based on the formulation of measures that affect the right to asylum –a universal and fundamental right– manifested through lack of political will and the discretionary use of normative instruments. This is exemplified by the instrumental use of directives for humanitarian protection such as the Temporary Protection Directive 2001/55/EC, the issuance of austerity rules that render rights into commodities in Europe or the enactment of third country agreements. The

second one, a political-institutional dimension, manifests through policies intended to obstruct the exercise of the right to asylum, impeding access to legal and safe routes; for instance, through the preeminence of foreign and security policies, under the justification of controlling mafias and trafficking (De Lucas, 2016). These violations of the principle of non-refoulement, and return to an unsafe third country, are the "red line" that should not be crossed, because they produce a trivialization of the right to asylum (De Lucas, 2016). This limit has been repeatedly transgressed beyond the countries of the Global North, where disregard of states' national and international commitments generates an externalization of the right to asylum (Crisp, 2020; Gandini et al., 2020).

Alison Mountz (2020) goes beyond De Lucas' approach, inviting us to think about the physical, ontological, and political 'death' of asylum. The first dimension focuses on the physical deaths produced by state mobilities and the global growth of externalization practices, including offshore processing and detention. The second—core to our argument—refers to how the continuous shrinking of spaces of asylum, mainly by preventing arrivals, is contributing to its 'ontological disappearance'. As the author explains, "With nowhere to be, no paths to becoming an asylum seeker, the very existence of asylum becomes threatened with extinction" (Mountz, 2020, p.4). This ontological death also leads to political death, as the continuous lack of visibility of asylum seekers and refugees undermines the existence of a critical mass to respond to this situation.

These critical accounts are indicative of the fact that we are witnessing a global crisis in the protection of people seeking humanitarian refuge. What similarities and particularities can we observe in the current state of asylum in LA? While Mountz (2020) focuses on borderlands controlled by the United States, the European Union, and Australia, the argument she develops also resonates with the changing landscape in LA. While the current progressive framework of refugee protection in the region is still alive, the increasing weakening of the architecture of protection by lack of or gaps in implementation, and the echoing of practices adopted by countries in the Global North, may undermine asylum by erasing it in practice. As we show in this article, access and exercise of the right to asylum in LA show signs of weakness, which are fundamentally expressed in the inadequate and/or limited implementation of legal frameworks. These trends pre-date the COVID-19 pandemic, but were exacerbated by it, because of mobility control measures (including administrative and criminal penalties) justified on the back of epidemiological concerns.

LA political-institutional responses to mixed migration flows—mainly from Venezuelans and Central Americans, among others—have been heterogeneous and not always consistent, with countries facing a key dilemma: recognizing these people as migrants or refugees. For instance, while Venezuelans are considered migrants in certain countries, in others they are classified as refugees, or both (Gandini et al., 2019). Chile and Uruguay have favored the first option, while Mexico has predominantly chosen the second and Brazil, the latter. However, there are also differential criteria within the same country for similar groups (Gandini, 2020; Prieto et al., 2021).

According to Hamlin (2021), the persistence of the migrant/refugee binary is an oversimplification of reality, a constructed 'legal fiction'. Refugees have come to be viewed as an exception to states' sovereign right to control their borders, given that they are considered to be in a privileged legal position compared to other migrants (Hamlin, 2021). Probably for that reason, states are reluctant to extend protection and refugees remain a rare category. Given that states have sovereignty on the interpretation and applicability of the international refugee regime, migrant categorizations and policies, as well as their implicit stratification of rights among 'legitimate' and 'illegitimate' claimants, may serve specific political interests over time and space, especially in times of 'crisis' (Crawley & Skleparis, 2018).

While in Europe the debate on the *vaciamiento* of asylum was linked to the so-called 2015 "refugee crisis", in LA the idea of a humanitarian crisis gained purchase throughout the region with the recent Venezuelan and Central American exodus (Vera Espinoza et al., 2021). In this context, discourses of "migration crisis" emerged to justify the exceptional nature of the

political-institutional responses adopted by many countries (Gandini, Lozano-Ascencio & Prieto Rosas, 2019; Zapata & Tapia, 2022; Zapata et al., 2022). In other words, prior to the COVID-19 pandemic, the governance of human mobility and asylum was already being met with a logic of exceptionality, rather than the rule of law. Several countries opted for a "state of siege", making permanent an exceptional, extraordinary, and provisional situation (Agamben, 2003; De Lucas, 2016). This exceptionality also manifests in security-oriented policies and practices, as well as in the "fractioning" of the refugee label, as part of a "deliberately transformative process to create far less preferential categories of temporary protection" (Zetter, 2007, p.182). In this context, the arrival of the pandemic initially led to a "crisis within the crisis" but which was later more accurately described as an environment of "multiple crises", a series of measures justified in a humanitarian/epidemiological narrative that further affirm notions of protection that are contingent and crisis-driven, which also extend to refugee protection (Vera Espinoza et al., 2021; Zapata et al., 2022).

Methodology

Our analysis is based on a comparative assessment of four country-case studies in LA: Brazil, Chile, Mexico, and Uruguay. The case selection responded to practical reasons related to the authors' expertise and/or location during the COVID-19 outbreak, as well as methodological considerations. These four cases are illustrative of what is happening in the LA region, with some commonalities and differences among them. They share: (i) having passed, in the past 25 years, refugee legislation that incorporated the Cartagena's Declaration expanded definition of refugee; (ii) having recently received a large number of people seeking international protection in a short period of time, albeit having relatively little prior experience in dealing with this type of flow; (iii) having a significant number of pending decisions (at least half of all asylum applications). However, these four country-cases differ on the use and (strategic) implementation of their regulatory frameworks. Taken together, these countries cover a diverse range of assemblages regarding migration and refugee policy, and thus provide an interesting setting for comparative analysis.

The study combines quantitative and qualitative data: i) a descriptive analysis of asylum and refugee data compiled by the United Nations High Commissioner for Refugees (UNHCR) for the past decade (2010–2020); ii) a review of the main refugee legal frameworks and mobility and refugee-related measures—laws, decrees, and administrative acts—before and in response to the COVID-19 pandemic (March to December, 2020); and iii) 51 online semi-structured interviews, conducted between June and September 2020, with key actors working directly or indirectly with migrant and refugee populations in each country: representatives from national and local governments, International Organizations (IOs), and Civil Society Organizations (CSOs). Interviewees were chosen based on a purposive sampling. Given the mobility restrictions imposed by COVID-19, the interviews were conducted online by audio/video conferencing and lasted between forty minutes and one hour. Informed consent was given by all participants.[3] A common interview schedule was used in the four countries and included, among others, questions related to changes in migration and refugee policy and practice during the pandemic, the impact of the pandemic on displaced and refugee populations, and changes in migrants' access to health, housing, labor, and social protection before and during the pandemic. The interviews were transcribed and coded into themes and the data was inputted into a common systematization matrix, which enabled triangulation of responses by the three types of actors across the case studies. The narratives collected in the interviews are imbued throughout the paper's analysis and interviewees have been cited where appropriate. Interview material as well as the qualitative and quantitative secondary data were analyzed to develop the comparative matrixes (Tables 1 and 2) in order to identify the similarities and differences in terms of legislation, the responses to growing refugee flows and the ways in which refugee protection has been weakened across the country-case studies.

Asylum legal framework and implementation before the pandemic

As shown in Table 1, the four case-studies show a predominant pattern in the LA region: the existence of progressive and comprehensive laws for refugees. However, although these countries have partially (Brazil) or fully (Chile, Mexico, and Uruguay) incorporated the expanded definition of Cartagena into their national legislations, only Brazil and Mexico have recently applied this definition to specific national groups. Meanwhile, Uruguay has adopted a governance model anchored in migratory regularization, making an instrumental use of asylum as a pragmatic alternative to resolve the legal situation of Cuban nationals. This instrumental use of asylum as a regularization mechanism is also seen in Brazil's strategy toward Venezuelans. This shows high discretionality in the use of the figure of asylum, often depending on the documents available to the applicant at the time of crossing the border and/or their country of origin. Finally, Chile has resorted to the use of different migration categories to the detriment of asylum, but unlike Uruguay, it has opted for the implementation of *ad hoc*, targeted, specific, and temporary measures. Details the normative frameworks for refugee protection and their implementation before the pandemic in the four country-cases (Table 1).

Against this background, in the last decade, LA has witnessed large migration and displacement flows, with some states suddenly turning into transit and destination countries. As shown in Figure 1, the number of asylum applications has increased significantly in the countries analyzed. Socio-environmental forced migration from Haiti -in the aftermath of the 2010 earthquake and the hurricanes in 2012 and 2016- was responsible for the spikes observed in Brazil around 2012, 2014 and 2016. Asylum applications were growing steadily at low rates until 2015–2016, when the Venezuelan exodus contributed to the historical growth of applications in Brazil, Chile, and Mexico. In the Mexican case, the growing number of asylum seekers from Honduras, El Salvador and Cuba also contributed to this increase. In Uruguay, Cubans have been the main group seeking asylum since 2017, while applications from Venezuelan nationals were marginal before the pandemic.

The increase in the number of asylum applications was followed by an analogous increase in the number of decisions[4] made in all four countries. However, in all of them the difference between applications and decisions still points to a remarkable lag in the administrative capacity of asylum systems. For example, from the 264,529 applications submitted in Brazil between 2010 and 2020, only 31% ended up in a final decision. Similarly, in Chile, 58.3% of the 18,000 applications made were decided on; in Mexico 49.5% of 173,250 applications were resolved, while in Uruguay, the decision rate was 57.4% for the 24,897 applications made.[5] Figure 2 shows the relative distribution of asylum decisions made in the four countries, which represent only a fraction of the total number of applications.

However, these broad indicators hide two important trends: the large differences in Refugee Recognition Rates (RRR) by nationality and in the timing of the recent dynamics observed in these countries. For instance, the RRR for Venezuelan citizens in Brazil was higher than average: of the cases decided on, 85.6% were granted asylum in the 2016–2020 period (UNHCR, 2021). Brazil became the second country in LA –after Mexico—to employ the Cartagena Declaration to extend protection to Venezuelans in 2019[6] and the only one using the *prima facie* or group recognition criteria for their Refugee Status Determination (RSD).[7]

Colombia was the main country of origin of asylum seekers in Chile (38.5% of all applications), with a RRR of 44% between 2000 and 2010, 15% in the 2010–2015 period, and 5% in the 2016–2020 period (UNHCR, 2021). Since 2016, applications by Cuban and Venezuelan nationals have spiked, representing 32% and 24% of all applications, but recognition rates for these origins are marginal.

In México, since the application of the Cartagena definition, Venezuelans became the nationality with the highest RRR - greater than 90% in the 2016–2020 period. Since 2018, the standards of Cartagena have been used for people from El Salvador and Honduras, although the RRR does not exceed half of the cases (Sánchez Nájera, 2019). The Refugee Law of Uruguay has been

Table 1. Implementation of asylum laws and other related measures before the pandemic.

|	Brazil	Chile	Mexico	Uruguay
Asylum legal framework [includes Cartagena Declaration]	Refugee Act 9,474/1997 [Art. 1, III]	Refugee Law 20,430/2010 [Art 2.2]	Law on Refugees, Complementary Protection and Political Asylum /2011 [2014] [Art. 13, II]	Refugee Law 18,076/2006 [Art. 2, B]
Application of expanded definition of Cartagena	*Cartagena applied to citizens of: 1998 - 2018: Sierra Leone, Syria, Palestine, Iraq, Democratic Republic of Congo, Afghanistan, Lebanon, Mali 2019–2020: Venezuela (prima facie)	*No evidence of Cartagena being applied to particular nationalities (such as Venezuelans) but courts have referenced it in the justification of some rulings.	*Cartagena applied to citizens of: 2006–2016: Colombia, Sudan, Iraq, Somalia, Syria, Iraq, Ukraine, Nigeria, Colombia, Guatemala and Haiti, among others. *Cartagena systematically applied to: 2016: Venezuelans 2018: Salvadorans and Hondurans	*Cartagena applied to Colombians (before 2010)
Practices to weaken asylum	*Lack of administrative capacity *Militarization of humanitarian response *Instrumental use as regularization mechanism: • solution for backlog of cases • selectivity and discretionality in application of laws *CONARE's lack of transparency on RSD procedures/eligibility criteria	*Lack of administrative capacity *Lack of transparency on legal basis for large number of rejected applications *Pre-admissibility interviews (not stipulated in law) and barriers to request asylum. *Delays	*Lack of administrative capacity and insufficient budget. *Not acceptance of valid documentation as proof of asylum-seeking status (detentions and deportations) *Requests-resolutions gap	*Lack of administrative capacity *Instrumental use as regularization mechanism: • avoiding entry visa for Cubans; dealing with undocumented Venezuelan children

Source: authors' elaboration.
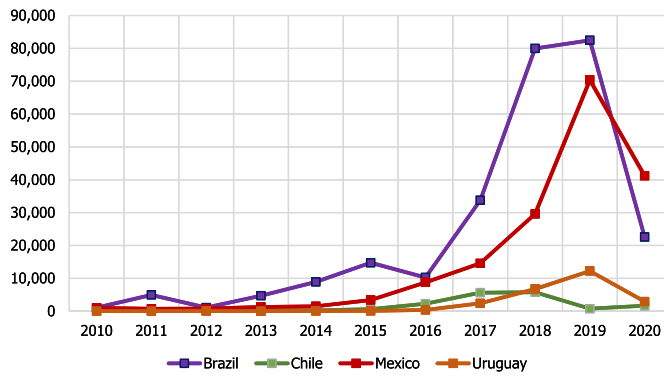
Figure 1. Annual total number of asylum applications by country, 2010–2020. Source: authors' elaboration based on UNHCR (2021).
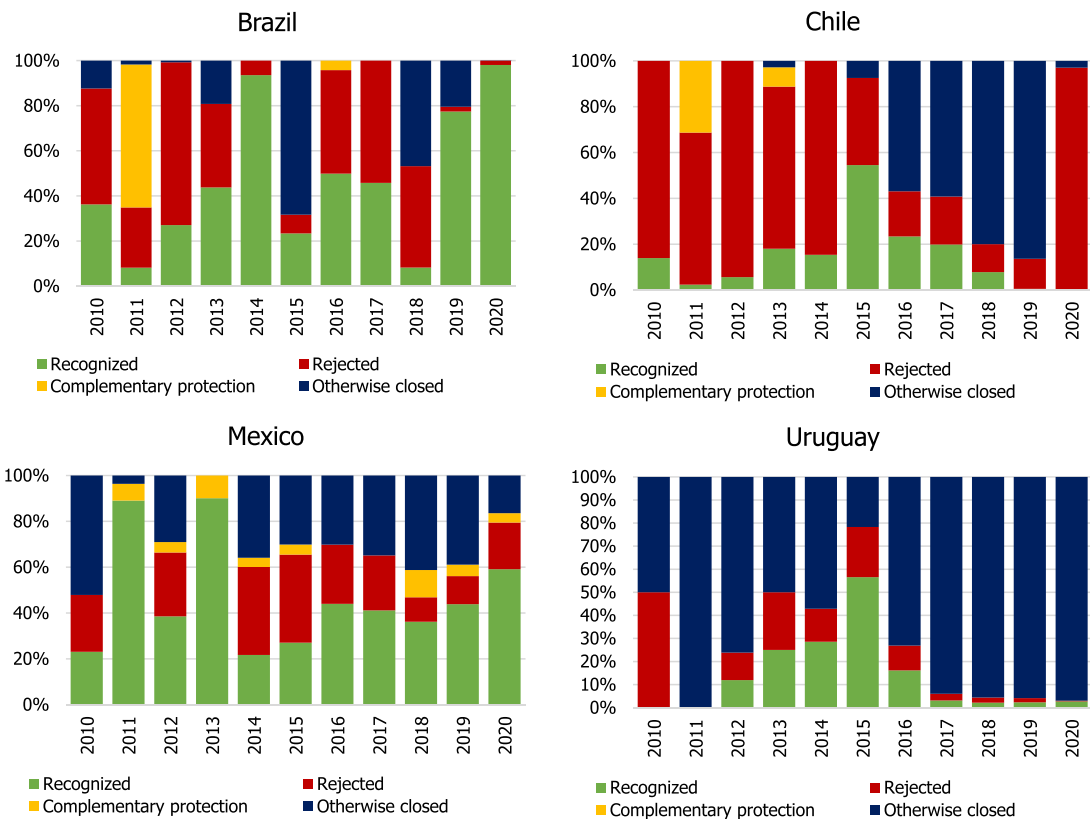

Figure 2. Relative distribution of annual decisions by status, 2010–2020.[8] Source: authors' elaboration based on UNHCR (2021) and COMAR (2014).

mainly used for Colombian nationals, who represented around 65% of all decisions made before 2016 and had a RRR of 67% during the 2000–2010 period.

The trends in RRR described above and the lag of administrative capacity of asylum systems across the four country cases, illustrate the past and present challenges to the implementation of LA's progressive political and discursive agenda on international migration and refugee protection. These challenges, include restrictive interpretations of the norms, low rates and divergent procedures for RSD and their coexistence with securitization and control practices, often inherited from past

military dictatorships –detention, expulsions, border militarization—and *ad hoc* regularization pro-grams—that translate into discrimination, xenophobia, and wide-ranging rights violations (Ceriani, 2018; Domenech, 2017; Jubilut et al., 2021). Many of these challenges precede the COVID-19 pandemic.

In short, in these four countries, asylum systems lack operational and administrative capacity, which results in a large number of pending applications, generating long waiting times that expose asylum-seekers to more vulnerable conditions, such as detention and deportation, as in Mexico. The delay, saturation or collapse of asylum systems is a characteristic that precedes the pandemic, which revealed perhaps their greatest weaknesses: there is no political will, sufficient budget, or institutional capacity to implement countries' international and regional commitments. Additionally, bureaucratic-administrative procedures impose many obstacles: in the case of Mexico, the law itself stipulates them, while in Chile, additional requirements and procedures are imple-mented but not stipulated in the law. However, there are other deliberate actions that lead to deterrence and the abdication of asylum applications, as discussed in the next section.

Implementation of asylum laws during the pandemic

Since the outbreak of the pandemic, the region seems to be immersed in multiple crises, includ-ing rapidly increasing intra-regional mobility and a health-economic emergency. On one hand, recently displaced populations across LA have been among the most affected by the adverse health, economic, and social challenges associated with COVID-19 (Bengochea et al., 2022). On the other, there is a substantive knowledge gap regarding the ways in which COVID-19 has impacted the effective implementation of these countries' legal 'progressive' frameworks, and asylum governance across the region. Summarizes the impact of the pandemic on the imple-mentation of asylum laws in the country case-studies (Table 2).

Brazil

With the outbreak of the pandemic in March 2020, the government of Brazil implemented a series of ordinances (*portarias*) to seal all the country's borders to non-nationals (Governo do Brasil, 2020). These normative instruments opened the door for the criminalization of migration and restricted the right to seek asylum, particularly for those coming by land. Justified on the back of public security and epidemiological concerns, this has meant a radical change in refugee governance in Brazil.

On one hand, these *portarias* made it easier to deny entry, repatriate and summarily deport people seeking refuge and/or in need of humanitarian protection, and to level 'infractors' with civil, administrative and penal charges. On the other, the language of these new instruments goes against the human rights-based spirit of the New Migration Law (2017), while not making any exceptions to honor Brazil's international protection commitments. In March, the government also authorized the use of the Armed Forces to support border control, public security and other pandemic-related actions (Portaria 1.232/GM-MD).

As stated by a representative from the Public Defender's Office [*Defensoria Pública da União*, DPU] in São Paulo:

> In practice, today there is no way to request asylum in Brazil, not even at an official border checkpoint… the ordinances stipulate that anyone who is not Brazilian or an immigrant with permanent residency cannot enter the country and does not have the right to seek asylum (interview, June 2020).

Furthermore, these ordinances explicitly discriminate against the social classes that transit across land borders, particularly, Venezuelan nationals: although entry restrictions were lifted for people entering the country by air since July 2020 (*portaria* no. 1), restrictions remained in place, until June 2021, for people coming from Venezuela, even those with permanent residency in Brazil, by any means of transport. This is particularly problematic given that in June 2019, CONARE had declared the situation in the country as 'serious and [in] massive violation of

Table 2. Implementation of asylum laws during the pandemic and other related measures (March–December 2020).

	Brazil	Chile	Mexico	Uruguay
Border closures	*March 2020: Closure of all borders (except for Brazilian nationals and permanent residents) *July 2020: Air travel reopened for all except flows from Venezuela	*March 2020: closure of all borders (except for Chilean nationals and permanent residents) *November 2020: Santiago Airport reopened for foreigners subject to sanitary norms	*March 2020: closure of northern land border with the USA. *High discretionality at border	*March 2020: closure of all borders (except for Uruguayan citizens, residents and refugees, among others)
Border Militarization	During the pandemic		Prior to the pandemic	
Access to asylum	*No access via land borders: civil, administrative and penal charges for 'infractors', repatriation/ summary deportations and "inability to request asylum" *No arrivals by air	*Pre-admissibility interviews (not stipulated in law) and barriers to request asylum. *Expulsions/ summary deportations.	*Limited access [high rejection rates] *Militarization: limits access to territory for asylum seekers	*Access granted conditioned to pre-admissibility interview
Deportations and forced returns from country	*2019–2020: Deportations increased 80-fold	*2020: 1,470 deportations	*April 2020- June 2021: 83,338 deportations	*None reported
Changes in asylum processes	Persistence of previous delays and high number of pending applications			
	Temporary suspension of in-person interviews			Continuity of in-person interviews
	*Suspension of asylum claims processing and reception of applications [exceptions apply] *Automatic extension of validity of migration-related documents	*Asylum applications on stand-by as government offices were closed	*Suspension of family reunification *Online interviews in several cases but delay in notifications *Flexibilization of procedure	*Digitalization of inland asylum applications. *Applications limited to land borders *Migration authorities discouraging asylum applications at land border

Source: authors' elaboration.

human rights', simplifying and fast tracking the process for RSD for Venezuelan citizens. Not surprisingly, the closure of borders produced an increase in the number of people entering the country through unofficial channels (*trochas*), leading to increased migrant irregularity and a significant rise in deportations, which increased 80-fold between 2019 and 2020 (from 36 to 2901 people) (Delfim, 2021). For instance, between January and October 2020, 94% of the 1.240 individuals deported were nationals of Bolivia and Venezuela (Baeninger et al., 2021). The total closure and militarization of the Northern border with Venezuela also made it impossible for IOs and the DPU to monitor potential rights violations at the border. As a representative from UNHCR stated:

> (…) protection needs did not cease with the pandemic. It is possible that people are being denied access to the country to request asylum, but we have no way of knowing because people are not even being allowed to cross the border. Normally we are informed when a person arrives, but it is not admitted, and we verify if they wish to request asylum (interview, July 2020).

In turn, among the changes in policy that directly impacted the governance of asylum and mobility at the beginning of the outbreak were the National Committee for Refugees (CONARE) suspension of all in-person services (including face-to-face interviews), plenary meetings and procedural deadlines for asylum applications. This further increased delays in RSD and augmented the already high number of pending applications. Also, given the suspension of in-person services by the Federal Police—institution responsible for implementing migration policy, including the issuing of migration and refugee documents—the government ordered the automatic extension of the validity of migratory documents (MJSP, 2020). In November 2020, CONARE resumed applications' procedural deadlines. However, some public institutions continued requiring up-to-date documentation, apparently unaware or unwilling to follow the revised regulation, which in turn created serious difficulties for migrants and refugees to exercise their law-guaranteed socioeconomic rights.

New regulations implemented in June 2021 (*Portaria* 655) allowed the partial reopening of the Venezuelan border for "humanitarian reasons", conferring a high degree of discretionality to officials at the port of entry, based on a non-specified 'vulnerability' criteria and effectively limiting the number of Venezuelans allowed into the country daily (G1, 2021). Thus, as summarized by a civil society representative, in Brazil, the pandemic served as the perfect excuse to increase mobility controls, "stop the (unwanted) flow from Venezuela", and "create mechanisms contrary to the Refugee Law, creating a [normative] instrument that has no legal basis, the 'inability to request asylum'" (interview, June 2020).

Chile

In Chile, refugee protection was already in a challenging state before the COVID-19 crisis unfolded, with barriers to submit an asylum application, increasing waiting times and high rejection rates already well documented (Gutiérrez Merino & Charles Pacheco, 2019; CRG, 2020; Vargas Rivas & Nazar Ortiz, 2021). The pandemic exacerbated some of these issues, particularly in a context of border closures and sanitary measures that have paved the way for further restrictions for people seeking international protection. On March 18, 2020, two weeks after Chile reported its first confirmed COVID case, the Chilean government declared a state of emergency (Decree No 104) and closed all borders for a period of 90 days, except for Chileans and foreign residents in Chile (Decree No 102).[9] While border closure is one of the main reasons behind the small number of border applications in 2020[10] (SJM, 2021), a representative from a migrant-led organization in Santiago emphasized that accessing the territory was already difficult for asylum seekers:

> Before the pandemic, the borders were already closed for asylum seekers, something even documented by the National Institute of Human Rights… A year ago (2019) a group of Venezuelans arrived at the Chacalluta border between Arica and Tacna requesting asylum, but they did not let them in (interview, June 2020).

In 2020, 1,629 asylum requests were formalized, but only 7 were recognized as refugees (DEM, 2020), the lowest recognition rate since 2010 (SJM, 2021). According to reports by Civil Society and Refugee Clinics, some practices identified before the pandemic, such as pre-admissibility interviews and even discretionary rejections at the border, have continued (Vargas Rivas & Nazar Ortiz, 2021). Barriers to request asylum inside the territory also remained during the pandemic. For instance, a court ruling in Iquique, ordered the Provincial authority to process an asylum request by email, after a local government staff refused to accept the application (INDH, 2020).

In November 2020, the Ministry of Foreign Affairs suspended the Visa of Democratic Responsibility for Venezuelans (VDR) imposed in 2018, arguing that the health crisis delayed the procedure, and rejected the applications open at that time. More requirements were imposed, and then the VDR began to be used for family reunification of Venezuelan families.

The barriers in accessing Chilean territory, both before and during the pandemic, have resulted in a sharp increase of arrivals by unauthorized crossing points, with 16,848 registered cases in 2020, 77% from Venezuela, 6% from Haiti, and 5% from Bolivia (SJM, 2021). In addition, between November 2020 and June 2021, at least six people from Venezuela died trying to cross the border with Bolivia (González, 2021). The government of Sebastian Piñera responded with the *Colchane Plan*, further militarizing the borders (Decree 265) and conducting several well publicized collective migrants' expulsions (Reyes, 2021). In total, 1,470 expulsions were executed in 2020. These have been challenged by civil society, international organizations, and Chilean courts.

Another issue has to do with the increased delay in RSD as many processes were suspended, particularly during the first 6 months of the pandemic. As one of our interviewees stated:

> The process is on standby because DEM, the institution in charge of interviews cannot make them. These interviews are confidential, and with no face-to-face attention to the public, the process is stuck (staff IO, July 2020).

While the government has rolled out a wide digitalization of migration procedures to reduce in-person assistance at offices (Freier & Vera Espinoza, 2021), asylum seekers can only update their contact details and apply for an extension online (DEM, 2020). Research has also shown the limited effect of the digital turn in speeding up these processes[11] (Stefoni et al., 2021). In March 2021, the Undersecretary of the Ministry of the Interior and Public Security introduced new procedures (official letter No. 7196), in some provincial governorates allowing new asylum applications -among other visa procedures- to be sent by post to the capital, Santiago.

Mexico

Since the beginning of the pandemic, Mexico kept its air borders open but, in agreement with the United States of America (USA), restricted mobility in the northern land border to essential traffic (DHS, 2020). A direct consequence was the entrapment of tens of thousands of Central Americans in México who, under the Migrant Protection Protocols, had to wait in the country for the processing of their asylum requests in the USA. The southern border was temporarily closed due to a measure adopted by Guatemala (Gobierno de Guatemala, 2020).

The government's pandemic measures included the suspension of administrative deadlines for all activities considered non-essential. According to the Commissioner from the Commission for Refugee Assistance (COMAR):

> The easiest thing to do was to simply suspend all procedures (…) but this generated a very strong dilemma: we considered our work essential (…). We managed to resolve this by respecting the suspension agreement, but we asked that a clause be included to allow us to continue receiving asylum applications (interview, June 2020).

So, while certain requirements were relaxed - such as asylum seekers' need of signing a weekly or biweekly registry at COMAR offices or the implementation of virtual interviews for severe cases - other procedures were suspended, such as RSD, personal notification of decisions and processing of family reunification requests, among others. The result was mixed: a reduction in

the gap between pending applications and decisions due to the low number of new applications at the onset of the pandemic and a delay in the notification of decisions.

Thus, although the right to seek and enjoy asylum was formally guaranteed, a set of previous practices, strengthened and reinforced during the pandemic, hampered its effective access: the persistence of the widespread violation of the principle of non-refoulement -both through rejection at borders and deportations-, the detention of people seeking refuge in immigration detention centers, as well as the excessive use of force, mainly through the militarization of immigration control through the creation of the National Guard.[12] As stated by an NGO representative:

> A very worrying issue is deportations, because no civil society organization is visiting immigration stations due to the pandemic. So, many people who are asylum seekers or potential refugees have not been able to access the procedure (interview, August 2020).

Finally, Mexico justified border control measures based on epidemiological concerns. Such is the case of the official letter issued by governmental authorities in October 2020 establishing penal charges for "foreigners who enter the territory without respecting the sanitary measures derived from SARS-COV-2" (SEGOB-INM, 2020). This statement evidenced the criminalization of migrants and people with international protection needs, who are rendered as subjects of criminal penalties on the presumption that they are a vehicle of contagion (Red Regional de Protección, 2020).

Thus, the pandemic exacerbated a preexisting trend that is expressed in the tension between migration and humanitarian governance: while COMAR makes a commendable effort to fulfill its obligations - even with an insufficient budget and limited operational capacity - the National Migration Institute (INM) and the National Guard interfere in their actions and, often, do not respect the right to seek asylum or to due process. Even without specific sanitary control measures, border controls and deportations were justified by the exceptionality of the pandemic. As summarized by an NGO representative:

> The only good thing was having maintained the policy of requesting asylum, recognizing it as an essential activity. But, on the other hand, it is very worrying that other activities of the INM were also maintained as essential such as detentions, control operations and deportations (interview, July 2020).

In 2021 there were new attacks against the asylum system. More than a year after the arrival of the pandemic in Mexico, there was an unsuccessful attempt to close the southern land border under the argument of epidemiological risk. The reopening of several borders in the region, and the economic crisis caused by the pandemic, among others, generated a substantial increase in the number of people arriving in the country, causing an even greater collapse of the asylum system (COMAR Commissioner interview, August 2021). The main response was greater militarization of the entire national territory. The nonexistence of other legal migration avenues for specific groups generates an overload of the refugee system. Such is the case of Haitians who are arriving from other parts of the continent, such as Chile and Brazil, but for the Mexican government they do not fit neatly into the clauses stipulated by the Cartagena definition.

Uruguay

In March 2020, once the pandemic reached the country, the Government implemented two subsequent decrees (104/020 and 159/020) for border closures with exceptions for citizens, residents, subjects of family reunification, asylum seekers, and travelers for health-related purposes or business, among others. As stated by a UNHCR representative, the agency had officially congratulated the Uruguayan government for keeping its borders open to individuals seeking international protection (interview, July 2020). Access to refuge was kept open but now conditioned to pre-admissibility interviews at land and air borders,[13] and for those already in the country, applications were exceptionally accepted by email (UNHCR, 2021). However, the language of the border closure decree 104/020 left room for discretionary practices including discouragement for asylum applications at the border (interviews with civil society representatives, August 2020). Incidents of this kind were already documented before the pandemic, affecting mostly

Cuban citizens (Curbelo, 2021), but the decree now allowed border agents to restrict the entry of those claiming international protection based on sanitary concerns.

The implementation of measures related to the militarization of land borders coincided with the onset of the pandemic and border closures, but was designed beforehand (Law 19,677/2019, replaced by decree 92/020 in March 2020). From March to November 2020, around 155 non-nationals trying to enter the Northeastern border from Brazil were detained by military forces (Presidencia, 2020).

Prior to the pandemic instrumental uses of asylum were manifested in two main practices. First, as Uruguay turned into a novel destination for Cuban migration and visa entry requirements were introduced, refuge became the main path to regularization among Cubans. In fact, as a way out from the administrative bottlenecks at CORE created by this migration flow, authorities recommended Cuban applicants to abdicate their asylum applications once they were given a provisional Uruguayan ID. This document often eases their incorporation in the formal labor market, facilitating the proof of means of support needed to apply for a residence permit under the 2008 Migration Law (Curbelo, 2021; Prieto et al., 2021). Second, the arrival of Venezuelan children under the age of issuance for Venezuelan IDs −9 years old- also contributed to increase the number of asylum applications. This is another instrumental use of asylum as Venezuelan citizens -in possession of passports or valid national IDs- are admitted, on a permanent basis, under the MERCOSUR Residence Agreement.[14] Both procedures have been deployed with the support of the Refugee Commission (CORE) and the National Migration Direction (DNM).

According to representatives from IOM and CSOs, during the pandemic these instrumental practices also included several adult Venezuelans, as the MERCOSUR agreement and the general migration regime were suspended, subjecting them to greater vulnerability due to long RSD processes.

Despite a significant drop in new asylum applications due to border closures across the region, it was impossible to avoid delays in the procedures already underway, given the collapse of the refugee system over the past couple of years (interview with CSO representative, August 2020). However, measures were taken to maintain RSD processes in operation. The CSO in charge of RSD maintained its in-person services, while the DNM, in charge of issuing the certificate of international protection applicant status required to process the national identity card, maintained the on-site delivery of documents. Finally, in agreement with CORE and CSOs, the National Civil Identification Bureau (DNIC) maintained in person services for cases of extreme urgency.

A good practice observed during the pandemic concerned individuals who had entered the country since 2018, but had been denied refuge or had abdicated their claims. These individuals were granted the right to regularize their status without being required to travel to the border to apply for a consulate visa. In 2020, more than 3,000 visas were granted digitally for those applying from Montevideo (interview, government official, August 2021). This measure fulfilled a long-term demand from CSOs; but was also a shortcut taken by the government to avoid making a final decision on the imposition of visas for Cuban citizens, who have continued applying for asylum at land borders.

Finally, in August 2021, using the sanitary crisis narrative, the Ministry of Interior issued a 'Service Order' to regularize thousands of former asylum applicants who had entered the country legally and wanted to apply for a residence permit (Presidencia, 2021). Despite the very positive outcome, this is another pragmatic legal measure adopted through a hierarchically inferior administrative disposition and as such, it is vulnerable to eventual changes in migration and asylum policy and practices. Furthermore, this development is nothing but a palliative to the administrative pre-pandemic collapse of the refugee system.

Discussion

Throughout this paper we have explored the proliferation of interrelated, often interdependent, political-institutional practices and technical-legal measures, as well as the gaps in the

implementation of refugee legislation across four countries in LA. These practices and measures, we argue, weaken the system of refugee protection across the region. The analysis of the interviews and the qualitative and quantitative secondary data shows that many of these practices precede the pandemic, but their use was exacerbated during the public health crisis, or even justified by it.

At the same time, our analysis sheds light on the similarities and differences of this weakening of asylum across the country case-studies. For instance, the analysis of Refugee Recognition Rates both before and during the pandemic, shows different trends. Mexico and Brazil have opted for using the asylum system, including the expanded refugee definition of the Cartagena Declaration, for specific nationalities, such as Venezuelans. To a lesser degree, Uruguay has also extended protection to particular groups, while there is no indication that Chile has employed this instrument, although the courts have recommended its use. These two countries exhibit high rates of rejection, abandonment or refusal of refugee applications, although they display some differences. Uruguay has relegated the use of asylum by opting for migratory regularization, particularly by resorting to the MERCOSUR mobility agreement, and resists the application of the Cartagena definition for the recognition of Cuban nationals. Chile, on the other hand, has resorted to putting barriers for accessing asylum and promoting the use of other migration pathways, such as consular visas, instead of refugee protection. Also, Chile has not explicitly used the Cartagena definition or the prima facie recognition, although these mechanisms are contemplated by the 2010 Refugee Law.

Thus, before the pandemic, the region was already witnessing a growing discretionality on the targeting and the inadequate/limited implementation of national laws and regional agreements on refugee protection, such as the limited, often random, implementation of Cartagena's expanded definition of refugee, as well as the creation of complementary migration pathways rather than using the existing refugee legislation (see for instance Jubilut et al 2021; Vera Espinoza 2021; Blouin et al 2020).

As evidenced in the four country case studies, COVID-related measures have further restricted access to international protection. In Brazil, Chile and Mexico, the public health crises served as an excuse to justify the roll out of a series of decrees, and other legal and administrative measures that are effectively curtailing access to asylum. Uruguay seems, at first glance, the exception to these trends. If anything, the pandemic allowed for the implementation of a series of exceptional measures aimed at migrant and refugee regularization. However, even in this exceptional setting, the temporary nature of these measures and the prevalence of other challenges did not solve the structural issues identified before the pandemic, namely, a growing tension between migration policy and instrumental uses of asylum in the country.

In most cases, these measures are effected along with politico-institutional decisions that have reinforced both the criminalization of mobile populations and those seeking protection. These include the militarization of borders in the four country-cases, and closure of borders in all except Mexico, the suspension of reception or delay on asylum applications, and a platitude of deterrence practices, such as the lack of clarity regarding migrants' protection rights or straight-out rejection at the border.

Beyond the dichotomy of practices identified by De Lucas (2016), a characteristic of these four LA countries is that the rolling out of these measures and practices does not take place in isolation, but are intimately imbricated, reinforcing their impact. These practices limit access to asylum, discourage the use of the refugee protection system, or its use on a discretionary basis, and in some places, may also translate into the detention and deportation of people seeking protection. These dynamics contribute to 'hiding' the experiences of refugees and asylum seekers, by a "continual processes of forgetting and erasure" (Mountz, 2020, p. 13).

Within this grim scenario, we have also identified some good practices across the four countries during the pandemic. For instance, Mexico continued accepting new asylum applications; Uruguay maintained interviews for RSD, while in Brazil and Mexico, applications can now be initiated online. In Chile and Uruguay, we have also seen an increased digitalization

of some processes, including the formalization of some asylum requests by email in Chile, and the regularization of those who have been denied asylum in Uruguay. However, there has been a mixed response to this digitalization as in some cases it does not cover all processes, or it excludes people without the means or know-how to navigate the process. However, it is still unclear whether facilitating access to protection via digitalization will continue after the pandemic.

The constant tensions we see in the region - between a progressive framework and its restrictive implementation, and between good and inadequate practices - raise pivotal questions about the state of refugee protection today and in the post-pandemic, as well as the potential knock-on effects of these weakening practices on other types of mobility. For instance, there is an increasing discretionality in relation to when and which measures apply to certain groups (e.g. humanitarian visas for Venezuelans), and questions emerge about how they will be used with other mobile populations with similar challenges to other nationalities that have not been widely recognized as refugees (e.g. the recent wave of Haitian nationals).

Conclusion

The global asylum system is at a turning point. Through the comparative analysis of the state of asylum in Brazil, Chile, Mexico, and Uruguay before and during the pandemic, we argue that the region is witnessing an accelerated weakening of refugee protection that has been further exacerbated during the pandemic. By the 'weakening of refugee protection', we refer to the increasing regressive implementation of national and regional frameworks, as well as the use of specific - and interrelated - technical-legal provisions and political-institutional practices that weaken the asylum system, before and during the pandemic, which can result in the *undermining, abandonment and/or replacement* of the region's widely praised refugee governance. Although in LA we are not yet witnessing the 'death of asylum' (Mountz, 2020), this weakening of protection evidences a complex scenario where a strong, 'liberal' framework coexists with a plethora of bureaucratic, legal, and political challenges that not only threaten the life of 'asylum', but the lives of people seeking international protection across the region. This paradox opens a new research agenda on asylum and displacement in LA.

In the short term, we are witnessing an *undermining* of state legislation and policies on refugee protection, through the normalization of *ad hoc* solutions that constantly change depending on the timing, type of mobility and specific group, and governments' political will (or lack thereof). This strategy also imposes more vagueness to a system that is already complex, and at times ineligible, for people seeking protection (Mayblin, 2021). In the long term, there is the risk of *abandonment and/or replacement* of the region's progressive framework, either through the permanence of ordinances and decrees that effectively forbid access - particularly evident in the context of the pandemic- or by the misuse (or limited use) of the framework already in place.

In this context, this paper brings empirical knowledge to bear on the fast-changing scenario of refugee protection in LA. As such, we join a growing interdisciplinary body of academic literature trying to make sense of the continuous threats to the global refugee protection system, as we start to interrogate how these dynamics are gaining purchase in the region. Although we outline a new research agenda that focuses on the practices that are 'weakening' refugee protection in LA, this study has at least two limitations. First, it only covers four countries in LA in the context prior to and at the height of the pandemic, which limits our understanding of how these dynamics play out in other countries of the region, especially beyond the pandemic and in a rapidly changing, and ever more unstable, sociopolitical context. Second, the article does not ascertain how these policies and practices affect displaced populations' lived experiences and what strategies they are developing to overcome these barriers to exercise their rights.

In synthesis, this study shows the need to go beyond an analysis of national and regional norms alone, putting a focus on implementation, the ways in which logics and policies travel,

and the potential long-lasting impacts of the pandemic in Latin America. In this sense, these findings demonstrate that the management of mobility and its policies of control, criminalization, and militarization, are not contained exclusively in the North, demystifying the assumption that migrating within the South is somehow 'easier'. They also reinforce the fact that having 'liberal' protective frameworks for displaced populations, such as those in place in LA, do not necessarily translate into greater protection for these populations, due to existing substantial implementation gaps (e.g. Jubilut, et. al., 2021).

Notes

1. While different denominations exist to group these States, we use the classification that includes countries where Romance languages are spoken. This generally includes South American countries, except Guyana and Suriname, Central American countries and Mexico.
2. In addition to the causes contained in the 1951 Geneva Convention and its 1967 Protocol, the Declaration broadened the definition of refugee to include "persons who have fled their countries because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances that have seriously disturbed public" order (Declaración de Cartagena, 1984).
3. The research received approval by the Ethics Committees of Queen Mary University of London (QMERC2020/27) and the Federal University of Minas Gerais (CAAE: 34657020.1.0000.5149).
4. UNHCR defines decisions as those resolutions taken on asylum claims during a calendar year.
5. Between 2010 and 2020, the accumulated number of pending decisions reached 182,570 in Brazil, 7,501 in Chile, 89,637 in Mexico and 10,599 in Uruguay (UNHCR, 2021).
6. Prior to that, the government had mostly relied on an *ad hoc* legal instrument (Normative Resolution 126/2017) created to grant residency permits, akin to those contemplated by the Mercosur Residence Agreement, to Venezuelan nationals (Zapata & Tapia, 2022).
7. However, academics and civil society have questioned whether the RSD procedures and eligibility criteria being used in Brazil for the (selective) recognition of Venezuelan nationals, including the lack of clarity about the technologies employed (Business Intelligence tools for data triangulation of fingerprints, migration and administrative records), can indeed be considered *prima facie* (Jubilut & Jarochinski, 2020; Tavares & Cabral, 2020).
8. Recognized decisions: successful applications granted refugee status; complementary protection: given when applicants are not eligible for protection under refugee law but are at risk of serious harm in their countries of origin; rejected: applications denied refugee status; otherwise closed: cases withdrawn or abandoned by applicants before or after the interview (UNHCR, 2014). Data for Mexico was not reported in 2014.
9. Santiago airport reopened in November 2020 but closed again in April 2021.
10. Asylum requests can be made at the border, at provincial government offices or in the Department of Foreigners and Migration in Santiago. In 2020, only 10 people sought asylum at the border (SJM, 2021).
11. The average waiting time for asylum applications is around three years (interview with NGO in Santiago and faith-based organization in Arica, July 2020).
12. Mexico's National Guard is an institution, alike a police, created by decree by President López Obrador in 2019, to provide public security. Among its broad attributions are combating organized crime and immigration control (National Guard Law, May 27, 2019).
13. CORE decided in real time who was allowed into the country.
14. The Mercosur Residence Agreement was signed in 2002 and came into force in 2009. It allows citizens of the trade bloc to obtain legal residence in another member state. Nine South American countries (excluding Venezuela that was suspended from the bloc) are part of the agreement, as full or associate members of the bloc.

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Authors' contributions

All authors contributed equally to research's design, development, analysis, and writing of the manuscript.

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