

## MIGRATION PATTERNS IN LATIN AMERICA AND THE CASE OF CHILE

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In the past several decades, the number of migrants worldwide has doubled.<sup>1</sup> In 2005, the United Nations pegged the figure at 190 million,<sup>2</sup> which equates to roughly three per cent of the world's population.<sup>3</sup> The phenomenon of migration is particularly multifaceted in Latin America. The subcontinent is highly heterogeneous with respect to demography, income distribution, and migration flows.<sup>4</sup> According to some estimates,<sup>5</sup> 25 million Latin Americans migrated in 2005 – a figure that translates to 13 per cent of migrants worldwide and to four per cent of Latin America's total population.



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- 1 | Patrick Taran and Eduardo Geronimi, "Globalización y migraciones laborales: importancia de la protección", *Perspectiva sobre migraciones laborales. Programa de Migraciones Internacionales*, International Labour Organization (ILO), 3.
- 2 | Daniel Villafuerte Solis, "Migración y desarrollo en la era de la globalización", *Comercio Exterior*, Vol. 56, No. 12, Dec 2006, 1027.
- 3 | Andrés Solimano, "Migraciones internacionales en la era de las crisis y la globalización: implicancias para América Latina", 1; cf. idem, "International Migration in an Age of Crisis and Globalization. Historical and Recent Experiences", Cambridge University Press, Jul 2010.
- 4 | "Migración y Políticas Sociales en América Latina", Konrad-Adenauer-Stiftung, Regionalprogramm Soziale Ordnungspolitik in Lateinamerika (SOPLA), 2010; cf. here especially Marcela Perticara, "Introducción del Estudio Migración y Políticas Sociales en América Latina", 9, <http://kas.de/sopla/de/publications/16856> (accessed 15 May 2013).
- 5 | "International Migration, Human Rights and Development in Latin America and the Caribbean", 36, Comisión Económica para América Latina y el Caribe (CEPAL), CEPAL conference, 20-24 Mar 2006, [http://www.eclac.org/publicaciones/xml/4/24024/DGI-2303\(SES.31-11\)-Migration-web.pdf](http://www.eclac.org/publicaciones/xml/4/24024/DGI-2303(SES.31-11)-Migration-web.pdf) (accessed 15 May 2013).

The country with the largest number of emigrants is Mexico, followed by Caribbean states and Colombia, with eight and 15 per cent, respectively.<sup>6</sup> There has been an observable expansion and diversification of countries to which emigrants are attracted. A considerable number of them continue to gravitate towards the United States, with Mexico and Guatemala serving as important way stations.<sup>7</sup> In 2009, roughly 20.5 million migrants (two-thirds of all Latin American migrants) selected the United States as their destination, of which 50 per cent were Mexicans. This number comprises roughly half of all U.S. immigration.<sup>8</sup> As a result, immigrants from Latin America constitute the largest ethnic minority in the United States. However, since the 1990s, a growing number of migrants have been moving to Europe (Spain in particular) as well as to Canada.<sup>9</sup>

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Beyond emigration to North America, internal migration within Latin America is also of great importance. At least 70 per cent of immigrants – and 90 per cent of those in Argentina and Chile – originate from other (typically neighbouring) Latin American countries.<sup>10</sup> Nations that absorb net inflows of immigrants include Argentina, Venezuela, and Costa Rica, as well as Chile, Mexico, and Brazil in more recent years. The “First Report of the Continuous Reporting System on International Migration in the Americas” (Sistema Continuo de Reportes sobre Migración Internacional en las Américas, SICREMI)<sup>11</sup> identified Argentina and Chile as the countries with the highest immigration rates in Latin America, with five and three immigrants per 1,000 inhabitants, respectively.

6 | “Migración internacional en las Américas”, OECD/CEPAL/OAS, SICREMI, 2011, VIII, IX, X, 17, 24 and 56 et seq.

7 | Cf. SOPLA, n. 4. The ramifications of the most recent economic crisis, in particular with respect to Europe, were beyond the scope of this paper.

8 | Ibid., 60. This statistic does not take offspring into account. Cf. “Notas sobre migración internacional y desarrollo: América Latina y el Caribe y la Unión Europea”, CEPAL, Brüssel, 2009.

9 | N. 6, 59. Insufficient data remains a constant challenge to the research pertaining to migration tendencies and patterns (both in Latin America and globally).

10 | Ibid., 15 et seq.

11 | Ibid., 25.

Chile is currently experiencing a phase of immigration that began in the 1990s after democratic rule had been restored. This phase has been characterised by an increase in immigration from Peru, which has been more substantial than migration from other Latin American countries such as Argentina, whence the majority of immigrants previously came. The case of Chile is emblematic of the social, political, and legal challenges that are associated with migration.

### CAUSES OF EMIGRATION

The primary causes of emigration are economic conditions and the labour market.<sup>12</sup>

Economic growth in target countries, which manifests itself in a better quality of life, generates demand for labour, whereas stagnant or declining economic growth in home countries prompts emigration. Research indicates that income is not the only factor in decisions to emigrate: other factors such as the likelihood of finding stable employment, the availability of financing for businesses, and long-term insurance coverage are considered, as well.<sup>13</sup>

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12 | Andrés Solimano, "Migraciones internacionales y mercado de trabajo globalizado: la experiencia latinoamericana", 3, 15 and 18. Updated version of the text presented at the conference for cross-border migration at ECLAC's headquarters in Santiago, Chile from 20 to 22 Nov 2002. A different version was presented by the ILO in 2002 at the "Panorama of Labour". The content of the document rests on the work of the same author: "International labor markets, Globalization and Migration: issues and evidence for Latin America" (2002c), sponsored by the ILO, and "Development cycles, political regimes and international Migration: Argentina in the 20<sup>th</sup> century" (2002b), from CEPAL and WIDER. In order to appraise the differences in income among migrants from Europe in the so-called New World, see T. J. Hatton and J. G. Williamson, *The age of mass Migration. Causes and economic impact*, Oxford University Press, Oxford, 1998, Kap. 3 and 4.

13 | Stephen Castles, *Migración internacional a comienzos del siglo XXI: tendencias y problemas mundiales*, 20 et seq.; cf. Oded Stark, *The Migration of Labour*, Basil Blackwell, Cambridge, 1999.

In general, the decision to emigrate is tied to the prospect of residing temporarily in the target country.<sup>14</sup> In such instances, the aims of the immigrant coincide with the interests of the host country, which seeks to meet the demands of the labour market without having to negotiate the social and fiscal consequences that accompany permanent re-locations. These circumstances have given rise to the concepts of legal temporary migration and circular migration. The U.S. policy of granting temporary worker visas for the length of employment is one such example.<sup>15</sup> 90 per cent of the ID cards attesting to permanent resident status (Green Cards) issued annually in the United States are allocated to employees who already have similar temporary visas.<sup>16</sup>

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Additional economic causes of migration are unemployment and the vicissitudes of the job market.<sup>17</sup> High unemployment in a particular country, especially during an acute crisis, coupled with a simultaneous demand for manpower in an economically prosperous country (whether on account of the generally propitious domestic conditions or on account of the need to replace labour that has itself emigrated), provides the impetus for emigration.<sup>18</sup> The

14 | The terms "permanent resident" and "transient resident" have unique definitions. The former refers to "a person that obtained a residence permit upon entry in the target country or entered the country as a temporary resident and later became a permanent resident". This definition refers only to legal immigrants. The term "transient resident" refers to anyone who "enters the target country with a residence permit that cannot be renewed (or, if so, only a limited basis)". This applies, inter alia, to students, employees who switch jobs, technicians, exchange program participants, tourists, seasonal workers and asylum applicants. Cf. n. 6, 6 and 80.

15 | Barry Mirkin, *La Migración Internacional en el Hemisferio Occidental: un estudio exploratorio*, Scalabrini International Migration Network, New York, 2011, 24.

16 | Ibid.; cf. also D. Papademetriou, D. Meissner, M. Rosenblum and M. Sumption, *Aligning Temporary Immigration Visas with US Labor Market Needs: The Case for Provisional Visas*, Migration Policy Institute, Washington D.C., 2009.

17 | Cf. Mirkin, n. 15, 27.

18 | Taran and Geronimi ascertain that there are situations in which "[T]here are certain lines of work for domestic labourers that are not even considered on account of low wages, dangerous working conditions, limited social prestige, and because of alternatives such as state support and unemployment insurance", n. 1, 4.

latter factor – demand for labour in the host country – is sufficient to attract migration flows.<sup>19</sup>



Hope for a better life: South American migrants in the Mexican province Tenosique. Mexico serves for many as a passageway to the USA. | Source: Marilyn Alvarado Leyva, Repositorio Península, flickr (CC BY-NC-SA).

The same principles apply in reverse. Two outcomes emerge when the demand for labour diminishes on account of declining economic growth or an economic crisis:

1. The country loses its attractiveness for potential immigrants and the migration influxes cease.
2. Immigrants who have not had enough time to establish themselves in their host countries are forced to return home or move on to a third country.

Spain illustrates the point. In 2012, the number of foreigners in the country fell by 205,788, according to data supplied by the National Institute of Statistics (INE). This is the first time since 1996 that the country's population has declined.<sup>20</sup> Spain has been hit hard by the economic crisis; in March 2013, it had an unemployment rate of 26.3 per cent. Without a doubt, this is the reason for the massive wave of emigration that transpired. By that same month of March, 125,486 people had left the country. The majority of these emigrants are Ecuadorians, Colombians, and Peruvians, i.e. individuals from countries that dealt with

19 | Solimano, n. 12, 19.

20 | *El Mercurio*, Santiago de Chile, 23 Apr 2013, A14.

large-scale emigration in the past and have also benefited from dynamic economic growth in recent years. In the same time period, only 90,639 Europeans left Spain, primarily Romanians, which represented the largest group of immigrants in the Iberian country.<sup>21</sup> The overwhelming majority of returning migrants go back to Latin America for the reasons listed above, but also because linguistic and cultural barriers complicate immigration into European countries that remain less adversely impacted by the current economic crisis.

**Contacts provide a certain sense of security, afford access to information, and minimise risks and uncertainties. The term "migrant chain" was coined to describe this phenomenon.**

The decision to emigrate is not only motivated by economic factors; contacts in the host country also play a large role. They provide a certain sense of security, afford access to information, and minimise risks and uncertainties. The term "migrant chain" was coined to describe this phenomenon.<sup>22</sup> Emigrants are cognizant that their social status in their host countries will not necessarily correspond to their status in their home countries.<sup>23</sup>

In addition to emigrants who move of their own accord, many migrants are forced to resettle as a result of political causes or natural disasters. Migrations for these reasons are common in some parts of the world, and their progressions depend on the willingness of host countries to absorb them. In order to prevent the conditions of affected individuals from deteriorating further on account of arbitrary policies and discrimination in host countries, the office of the United Nations High Commissioner for Refugees was created for such cases, and the statuses for refugees have

21 | Ibid.

22 | Claudia Mora, "Estratificación Social y Migración Intrarregional: Algunas caracterizaciones de la experiencia migratoria en Latinoamérica", *Revista Universo*, No. 24, Vol. 1, Universidad de Talca, 2009, 132.

23 | María Skoczek, "Globalización y migraciones a caballo de los siglos XX y XXI", *ACTAS L. de V.*, Vol. 27, 2004, 49; cf. also Verónica Cano and Magdalena Soffia, "Los estudios sobre migración internacional en Chile: apuntes y comentarios para una agenda de investigación actualizada", *Centro Latinoamericano y Caribeño de Demografía*, in: *Papeles de Población*, No. 61. CIEAP/UAEM, Aug-Sep 2009, 150; Villafuerte Solís, n. 2, 1038.

been defined accordingly.<sup>24</sup> The number of refugees worldwide is nearly 16.3 million.<sup>25</sup>

The phenomenon of migration is closely related to alarming criminal activity such as human trafficking, which is becoming increasingly prevalent in areas where people cross borders in large numbers.<sup>26</sup> According to recent estimates, roughly 800,000 individuals are transported between various countries, often for the purposes of sexual exploitation. This type of activity does occur in Latin America, although the majority of victims hail from countries in Southeast Asia or from former republics of the Soviet Union.

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### **WHO ARE THE MIGRANTS?**

The diverse descriptions of migrants reflect the significant differences among them. On the one hand, there are those who have attained high levels of education; on the other hand, there are those who lack any formal education or degree. There are also those who fall somewhere in the middle, predominantly postgraduates, as well as skilled workers, apprentices, and trainees. The common denominator that binds all of these migrants in search of a better life together is their working age.

The levels of educational attainment and socioeconomic backgrounds of migrants influence the conditions surrounding their emigration, the opportunities for – and difficulties of – obtaining entry in their target countries (visa, work permits, entry requirements), as well as the ease with which they integrate into society. What emerges is a “dual representation of migrants”: Individuals that integrate without any problems are contrasted with those whose

24 | The United Nations High Commissioner for Refugees has the mandate to protect refugees and internally displaced persons from persecution or from conflict and finds sustainable solutions to assist their repatriation or resettlement to a third country. The office was created by resolution 428 of the United Nations General Assembly on 14 Dec 1950. It assumed its responsibilities in January 1951.

25 | Mirkin, n. 15, 24.

26 | Ibid., 26 et seq.

encounter more friction.<sup>27</sup> It's clear that the international labour market is characterised by segmentation: highly qualified and affluent individuals benefit from high mobility and low hurdles, whereas those with limited financial means and fewer qualifications are confronted with hindrances and restrictions.<sup>28</sup>

These conditions lead to what has been described as a *brain drain*, which occurs when skilled labour emigrates, i.e. when a large group of individuals with technical skills or knowledge decide to leave their home country. This trend is worrisome because it jeopardises development prospects at home and because sectors such as health care, education, technology, and engineering may suffer from a paucity of labour. It becomes all the more worrisome when the migrating persons in question lose interest in an eventual homecoming, thereby rendering the loss permanent. Smaller economies are disproportionately affected. In the case of Latin America, the number of emigrating skilled labourers in 2000 amounted to over one million; some countries lost five to ten per cent of this group to countries overseas.<sup>29</sup>

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The lot of those with fewer qualifications is rather different. From the onset, they face greater difficulties obtaining work visas and residence permits because their profiles do not match the criteria of their target countries. They often face existential threats to their livelihoods, a condition

27 | Carolina Stefoni, "Ley y política migratoria en Chile. La ambivalencia en la comprensión del migrante", in: Bela Feldman-Bianco, Liliana Rivera Sánchez, Carolina Stefoni and Marta Inés Villa Martínez, *La construcción social del sujeto migrante en América Latina. Prácticas, representaciones y categorías*, Consejo Latinoamericano de Ciencias Sociales (CLACSO), FLACSO, Universidad Alberto Hurtado, 2011, 84 et seq., [http://desarrollo.sociologia.uahurtado.cl/wp-content/uploads/2012/01/c.stefoni\\_Ley\\_y\\_politica\\_migratoria\\_en\\_Chile.pdf](http://desarrollo.sociologia.uahurtado.cl/wp-content/uploads/2012/01/c.stefoni_Ley_y_politica_migratoria_en_Chile.pdf) (accessed 15 May 2013).

28 | Solimano, n. 12, 5 and 23. With respect to the study by the U.S. research foundation, the author makes a distinction, as the majority of foreigners who earned doctorates between 1990 and 1991 came from India and China; in 1995, 79 and 88 per cent of them still worked in the country, respectively. Of the original group of South Koreans, only 11 per cent remained, particularly those who obtained doctorates in the fields of science and engineering. Cf. also, n. 6, 25 and 27.

29 | N. 6, 25 and 27.



that is linked to their lack of documentation and access to state-sponsored insurance programs, and which can lead to exploitation and discrimination. In the workplace, unskilled and uneducated workers are forced to rely on luck or strokes of serendipity to lead them to jobs as construction workers, house cleaners, janitors, or landscapers. They have small incomes and generally put up with poorer working conditions than those who are better qualified.<sup>30</sup>



Immigrants harvesting cucumbers in the USA: Often irregular migration is accepted, all the more, as it brings advantages for employers. | Source: Laura Elizabeth Pohl, Bread for the World, flickr (CC BY-NC).

## **IRREGULAR MIGRATION**

Unauthorised entry into a country or failure to abide by the restrictions associated with lawful entry can create irregular circumstances for migrants. Although the term “illegal” is still in use in some countries, “irregular” is more descriptive in these situations. There are cases in which migrants enter a host country surreptitiously and cases in which migrants use fraudulent ID’s or visas to obtain entry. The latter examples are criminal acts, to which the term illegal applies much more readily than irregular, at least from an administrative point of view. It is imperative to make the distinction between the two terms in order to prevent government officials from treating them as the same thing in spite of widely different circumstances.<sup>31</sup>

30 | Cf. Peticara, n. 4, 11; cf. also Solimano, n. 12, 8.

31 | Ibid., 12.

The number of irregular migrants worldwide has been estimated to be 50 million.<sup>32</sup> The vast majority of them, or 10.8 million, reside in the United States;<sup>33</sup> 50 per cent of them are Mexicans and more than 20 per cent come from Latin American countries. The figure above represents about 3.5

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per cent of the total U.S. population; it also represents about 28 per cent of the U.S. population born outside of the United States.<sup>34</sup> Over the past several years, however, there has been an observable decrease in the rate of immigration. The data has been corroborated by the finding that the number of immigrants without paperwork entering the United States dropped from an average of 850,000 annually between 2000 and 2005 to an average of 300,000 annually between 2007 and 2009.<sup>35</sup> Among Mexicans, the number of irregular immigrants fell from 500,000 to under 150,000 per year.

The economic crisis, which also left its mark on the United States, led to high levels of unemployment among Latin American workers, although it did not induce them to return to their countries of origin. These immigrants from Latin American have become "a relatively stable variable in both the labour market and in American society, and it's likely that employers will rely on them once again as an accessible and readily available source of manpower as soon as the economy recovers".<sup>36</sup>

Whatever the magnitude of illegal immigration in the United States, its appearance in Latin America deserves special attention. The phenomenon is prominent in countries that facilitate it, i.e. those with a shared language and an expansive informal economy. In contrast to the United

32 | Numbers according to Mirkin, n. 15, 26. He references work done by Joseph Chamie, "Mind the Gap: Public and Government Views on Migration Diverge", 16 Oct 2009, <http://yaleglobal.yale.edu/content/mind-gap-public-and-government-views-migration-diverge> (accessed 7 May 2013).

33 | Ibid. The text refers to data from Jeffrey Passel and Vera D. Cohn, "A Portrait of Unauthorized Immigrants in the United States", Pew Hispanic Center, Washington D.C., 2009.

34 | Ibid.

35 | Ibid. The comparison is made on the basis on numbers provided by Jeffrey Passel and Vera D. Cohn, "U.S. unauthorized Immigration flows are down sharply since mid-decade", Pew Hispanic Center Report, Washington D.C., 1 Sep 2010.

36 | N. 6, 13 et seq.

States, the disparities in incomes in Latin America are less pronounced, as economic profits are generally lower.<sup>37</sup>

Irregular residence is often tacitly condoned, especially if employers accrue benefits as a result – often at the expense of migrating labourers.<sup>38</sup> Conditions can become particularly precarious for migrants who no longer possess valid residence permits; they often find themselves without access to public health facilities or federal assistance; their mobility within the country is often compromised, leading to family fragmentation.<sup>39</sup>

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Although fewer women than men migrate (around 46 per cent) on a global scale, the share of women as a percentage of total migrants has grown gradually since 1960. Among migrants from certain regions (highly developed regions such as Europe, North America, and Oceania), women already constitute a majority.<sup>40</sup> The reason for the increase rests on the notion of economic and social change as an enabler of individual choice. Whereas migration has historically been considered as an “essentially male and primarily economic phenomenon”, this understanding no longer applies in view of increased female migration today.<sup>41</sup> The same is true with respect to older studies of migration that assumed that “decisions to emigrate are masculine prerogatives and that female migration stemmed from the desire to bring families together”.<sup>42</sup> Nonetheless, the threats that female migrants face in the form of workplace discrimination or the loss of rights and basic liberties should not be underestimated.<sup>43</sup>

37 | *Ibid.*, 14. A closer analysis of the factors that cause migration among Latin American countries was carried out by Guillermo Vuletin, “Measuring the informal economy in Latin America and the Caribbean”, IMF Working Paper WP/08/102, International Monetary Fund (IMF), Washington D.C., 2008.

38 | Solimano, n. 12, 10 et seq.

39 | Cf. Stefoni, n. 25, 9.

40 | Cf. n. 6, 70.

41 | *Ibid.*; Mora, n. 21, 132.

42 | Silvia Pedraza, “Women and Migration: The Social Consequences of Gender”, *Annual Review of Sociology*, Vol. 17, 1991.

43 | More on this point in the SICREMI-Study, n. 6, 71.

## REMITTANCES: NATURE, SIGNIFICANCE, AND CONSEQUENCES

When considered over a longer time frame and from a global point of view, money transfers or remittances from migrants to their families back home have increased.

This trend is particularly evident in Latin America, where, according to estimates, the value of remittances has doubled every five years since 1980.

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In 2009, 20 per cent of all income earned in developed countries (57 billion U.S. dollars) was passed along to countries

in Latin America.<sup>44</sup> The extent of money transfers contracts during recessionary phases. The impact of business cycles becomes apparent when figures from 2008 and 2009 are compared.<sup>45</sup> As mentioned above, the amount of remittances totalled 57 billion U.S. dollars in 2009, whereas the figure was closer to 68 billion U.S. dollars in 2008. That indicates that money transfers to Latin American and Caribbean countries dropped over twelve per cent within a single year. The available data for 2010 suggests a modest rebound; 58 billion U.S. dollars was transferred. The countries that registered the largest decreases in remittances between 2008 and 2010 include Colombia (-19 per cent), Brasil (-16 per cent), and Mexico (-15 per cent). Bolivia, Jamaica, and Honduras (-7 per cent) also experienced considerable declines.<sup>46</sup>

It is worth pointing out that there are also remittances from Spain. In 2009, 2.3 million Latin Americans lived there. The country's level of unemployment (26 per cent in 2010) had adverse effects on working conditions, creating a ripple effect on spending habits. Remittances from Ecuadorians living in Spain, for example, decreased 27 per cent between 2007 and 2010.<sup>47</sup> The Banco de España in 2008 reported a decrease of eight per cent in transfer payments to Latin America as a whole.<sup>48</sup>

44 | N. 4, 11.

45 | Ibid.; Mirkin, n. 15; cf. also World Bank, "Outlook for Remittance Flows in 2009-2011", *Migration and Development Brief*, 12, 2010.

46 | N. 6, 22.

47 | Ibid., 23.

48 | Peticara, n. 4, 12.

Because of the falling level of remittances, consumption has declined in migrants' countries of origin. Less investments were made in the productive capacities of small and medium enterprises. The same applies for the education and health care sectors. Furthermore, people are saving less. The ultimate severity of the financial crisis, however, depended on several local factors, including poverty levels and the relative sizes of the home and target economies.<sup>49</sup>

Although remittances clearly demonstrate positive effects, there are also negative consequences. Money transfers certainly do not negate the loss of human capital, as the case of Uruguay illustrates.<sup>50</sup> Another consequence is the potential development of a "culture of dependency", which can erode habits of saving, hard work, and entrepreneurship among recipients of such transfers.<sup>51</sup>

## INTERNATIONAL COOPERATION

The international nature of migration requires bilateral and multilateral responses. Countries in North and Latin America have signed over 140 bilateral treaties with one another. In the time period between 1991 and 2000 alone, the number of agreements reached 67, of which 28 were between Latin American countries; 37 were signed with countries outside of the region.<sup>52</sup> A glimpse of multilateral cooperation was on display in 2006 when the UN organised the "High Level Dialogue on International Migration and Development", which led to the creation of a global forum that has taken place annually ever since. One notable contribution brought up at the forum is the idea to draft model legislation that could serve as a template for individual countries.

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With respect to the activities of regionally- and internationally-focused organisations, there is a broad spectrum of initiatives managed by the European Union, the

49 | Cf. Solimano, n. 3, 11; cf. also Peticara, n. 4, 11.

50 | Cf. Cristen Davalas, Cecilia Plottier and Sebastián Torres, "Fuga de Cerebros: El caso Uruguayo", in: SOPLA, n. 4, 281 et sqq.

51 | Solimano, n. 3, 11.

52 | Ibid., 35. The author relies on numbers provided by the International Labour Organization: "ILO Migration Survey 2003: Country summaries", Geneva, 2004.

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Ibero-American Summit, the Southern Common Market (MERCOSUR), and the Caribbean Community (CARICOM).<sup>53</sup> The European Union has launched a number of initiatives to catalyse cooperation and discussions with developing economies. In 2008, under its auspices in Lima, the fourth summit between Latin American states and the EU featured a discussion on the "Dimensions of Cross-Border Migration and its Relationship to Development". In 2009, cooperation between the European Development Fund (EDF) and countries in Africa, the Caribbean, and the Pacific region was solidified with the aim of creating an instrument to observe and analyse questions related to both migration and to the strengthening of institutions and civil society; the goal is to generate more fruitful discussions about the challenges of migration.

**ONE EXAMPLE: MIGRATION IN CHILE<sup>54</sup>**

Over the course of the 20<sup>th</sup> century and to this day, examples of both planned development and spontaneous immigration are readily discernable in Chile's history.<sup>55</sup> According to estimates, 358,344 immigrants lived in the country in 2009, comprising a mere 2.08 per cent of Chile's total population. Yet the figure represents an increase of 91 per cent over the course of seven years.<sup>56</sup> One particularly important aspect of the increase relates to Peruvian immigrants, the largest group of immigrants in Chile. The data available between the two uprisings (1992-2002) indicates that the size of their group increased by 394 per cent. In comparison, immigration from Argentina rose by 26 per cent over the same period. Roughly 190,000 Peruvian natives live in Chile; together, they comprise 37 per cent of all immigrants in Chile.

53 | Ibid., 36.

54 | Parts of this chapter were composed for joint publications with Peruvian and Chilean academics that were commissioned by the Konrad Adenauer Foundation and supported by the Institute for International Studies at the University of Chile and the Catholic University of Peru.

55 | Cano and Soffia describe the essential research on migration in Chile, in the course of which they explain various historical milestones. Cano and Soffia, n. 22, 129-167.

56 | Cf. Jorge Martínez Pizarro, "Breve examen de la inmigración en Chile según los datos generales del censo 2002", CELADE/CEPAL, 2003.

The marked increase of immigration from Peru is ascribed to several causes, including economic reasons (in particular, the quest for better pay). Neither country has visa requirements with respect to the other; in fact, personal identification cards or passports generally suffice. Because a Peruvian minority already resides in the country, established networks in Chile offer opportunities for other immigrants to get plugged in. Research studies, including those conducted by FLASCO,<sup>57</sup> indicate that 86 per cent of all immigrants in Santiago found their first jobs through a friend or a relative. With respect to the division among gender, 56.8 per cent of Peruvian immigrants are women, most of whom work as household assistants; 72 per cent of all Peruvian immigrants are young people of working age; 20 per cent of them are skilled labourers or technicians. With respect to the geographical distribution of immigrants, 78 per cent of them live in the greater Santiago area; 16 per cent of them live in the northern part of the country; and only one per cent of them live in the southern part of the country.<sup>58</sup>

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In the relationship between Chile and Peru, the topic of migration is always on the agenda. This creates challenges for the Chilean legislative process. Swift course corrections are required to resolve questions concerning migrant statuses, as the laws in Chile do not yet conform to applicable international agreements.<sup>59</sup> The prevailing directives (D.L. 1.094 of 1975 and D.S. 597 of 1984) are still based on an ideological foundation that reflects neither democratic politics nor democratic jurisprudence; the overriding goal of national security and the expansive conception of sovereignty of the era coloured the directives, leading to a degree of despotism in their application.<sup>60</sup> The rationale for these directives gave rise to a radicalised perception

57 | Feldman-Bianco et al., n. 27.

58 | Cf. Moisés Hernández Sánchez, "La migración peruana en Chile y su influencia en la relación bilateral durante el gobierno de Michelle Bachelet (2006-2010)", master's thesis in international studies, Institute for International Studies, Universidad de Chile, Jan 2011.

59 | Cf. Stefoni, n. 27, 79.

60 | Macarena Machín Álvarez, "Los derechos humanos y la migración en Chile: Desafíos y oportunidades para la convivencia intercultural", Nov 2011, 14.

of immigrants, which in turn nurtured suspicions that approached a burden of proof in reverse.<sup>61</sup>

Chile's entry requirements are supplemented by a complex visa system, resulting in a considerable number of illegal residents in the country. Recent democratic governments, operating under a different set of assumptions than their predecessors (who wrote the laws that remain in effect to this day), have addressed the situation periodically with various measures. What resulted in practice was "amnesty" for migrants. This happened initially in 1997 and entailed the legalisation of 40,000 immigrants from Chile, of which 50 per cent received permits for permanent residence. The second measure went into effect in October 2007<sup>62</sup> and applied mainly to 45,000 Peruvian immigrants.

In the same spirit, measures have been devised to improve the conditions of immigrants in areas such as health care and education in order to respect their rights.

**In the field of health care, the 2004 program for pregnant women is especially important because it grants every woman the right to medical assistance, pregnancy support, and delivery care without regard to her legal status.**

In the field of education, the newsletter "The Adaptation, State, and Exercise of the Rights of Students with Immigrant Backgrounds at Educational Facilities" made an outstanding contribution. In the field of health care, the 2004 program for pregnant women is especially important because it grants every woman the right to medical assistance, pregnancy support, and delivery care without regard to her legal status.

Another important program<sup>63</sup> is the 2007 agreement of cooperation established between the health and interior ministries (based on international treaties that Chile has ratified) that confers the same level of publicly-provided health care on all foreigners under the age of 18 without regard for the legal status of their parents or legal guardians.

The overhaul of the visa system was intended to produce a re-examination of the policy of extending visas – a policy that often yields indefinite residence permits. The status granted to immigrants who are contractually bound to their place of residence, i.e. those who have travelled into the country or live in the country to complete an assignment

61 | Cf. Stefoni, n. 27, 6.

62 | Cf. Resolución Exenta 36.339, 21 Oct 2007.

63 | Cf. Stefoni, n. 27, 15.



for an employer, deserves special consideration. These types of visas are valid for a maximum of two years and also apply to the closest family members of the recipient.<sup>64</sup> A chief concern in these cases is that the right to remain in the country hinges on the employment contract. Under current law, the visa becomes invalid as soon as the contract expires, and must be reported to the relevant agencies (Departamento de Migración y Extranjería del Ministerio del Interior, DEM) within 15 days. The importance of revisiting these requirements arises from the fact that they can create situations in which employers take advantage of their employees. (Indefinite residence permits can only be obtained after the applicant has spent two years in the country). Employers frequently take advantage of the fact that their employees depend on their contracts not only for their incomes, but also for their right to remain in the country.

When reforming this body of regulations, suspicions need to be cast aside to focus on the best ways to assimilate immigrants. Doing so would provide opportunities to strengthen relationships among Latin American states, particularly among neighbours. The creation of a new legal framework in Chile should aspire to implement regulations that are impervious to business cycles, thereby ensuring continuity regardless of which way the wind is blowing in the nation's capital.

**The creation of a new legal framework in Chile should aspire to implement regulations that are impervious to business cycles, thereby ensuring continuity regardless of which way the wind is blowing in the nation's capital.**

In spite of the weaknesses of the laws in effect today, there are some positive aspects. Notably, immigrants have the opportunity to participate politically and to vote in Chile. The republic's constitution sets forth that immigrants who have lived in the country for more than five years have a right to vote, provided they fulfil the criteria that apply to other Chileans: They must be at least 18 years of age and must have no history of serious criminal convictions.<sup>65</sup> It's worth mentioning that there have been some changes to the way Chilean citizenship can be acquired. The

64 | Cf. Article 23 of D. L. 1,094.

65 | Cf. Article 13, first paragraph and 14, first paragraph of the constitution of the Republic of Chile. Cf. also articles 60 and 62 of the organic constitutional laws on the subject of popular referendums, No. 18,700, of 6 May 1988, amended by law No. 20,568, of 31 Jan 2012.

heavy-handed administrative methods enabled by the constitution of 1833 gave way to greater flexibility under the current iteration of the constitution, which was introduced after reforms in 2005. The constitution of 1980 stipulated that foreigners who wished to naturalise had to relinquish any other citizenship – a stipulation that was also mandated by the constitution of 1925. The most recent constitutional reform, however, eliminated the precondition that previous citizenship be renounced, requiring only that the acquisition of Chilean citizenship conform to current laws. In order to obtain Chilean citizenship, a foreigner must satisfy the following prerequisites: He must be at least 21 (or 18 if one of his parents is Chilean); he must have lived in the country continuously for at least five years (a period of time that is pegged to the date his visa was first issued); he must possess an unrestricted residence permit; he must not have a criminal record and must not be standing trial; and he must be capable of making his own living.

**Persons who were born in Chile to parents who are residing illegally in Chile do not automatically receive Chilean citizenship.**

The status of individuals who were born in Chile to parents who are residing illegally in Chile remains unresolved; they are considered “transient residents”. They do not automatically receive Chilean citizenship because Article 10, Section 1 of the constitution reads: “Persons born in the territory, with the exception of those children of foreigners who are in Chile serving their government, *as well as those children of transient foreigners*. However, all may opt for the Chilean nationality” (emphasis mine).

Lastly, it must be stressed that Chile is fully integrated in the international judicial system that promulgates, recognises, and protects human rights. As part of this approach, it has adopted of the Universal Declaration of Human Rights and its stated principles, and ratified the International Covenant on Economic, Social, and Cultural Rights; voluntary commitments; the American Convention on Human Rights; notable agreements on the rights of women and children; and the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The principles defined by these international agreements are important reference points for Chile in its efforts to craft a modern immigration policy.

## **CONCLUDING THOUGHTS**

Globalisation adds a new dimension to the phenomenon of migration. It reveals the indispensability of coordinated political action to gradually complement the measures that individual states have already enacted. This approach involves the challenge of identifying mutually shared principles to serve as the foundation for shared policy. It's all the more necessary in view of the relationship between migration and human rights and the emerging inter- and supranational norms that govern them. Globalisation has produced a paradoxical outcome: standardised rules and regulations have facilitated the flow of goods, capital, and services while similar guidelines regulating the flow of people have remained elusive. It is an outcome that demands a response.<sup>66</sup>