

## **RESOLUTION 2/18**

### **FORCED MIGRATION OF VENEZUELAN**

In its report “Democratic Institutions, the Rule of Law and Human Rights in Venezuela,” the Inter-American Commission on Human Rights (hereinafter “IACHR”) highlighted the political, economic and social crisis in Venezuela in recent years, as well as the multiple and massive violations of human rights of the majority of the Venezuelan population, with particular impacts on the rights to life, personal integrity, personal liberty, freedom of expression, freedom of movement, judicial protection, health, food, and work, among others.

The IACHR considers that the massive violations of human rights, as well as the serious crisis that Venezuela has been facing as a result of the shortage of food and medicines, has led to the exponential growth of hundreds of thousands of Venezuelan people who have been forced to migrate to other countries in the region in recent years as a survival strategy that allows them and their families to preserve rights such as life, personal integrity, personal liberty, health, and food, among others.

The IACHR notes that a large number of Venezuelans have been forced to flee Venezuela as a result of violations of human rights, violence and insecurity, and persecution on the basis of their political opinion; as well as to escape the effects of the crisis generated by the scarcity of food, medicines, and medical treatment and the difficulty of collecting pensions, among others. The impact of the severe food and health crisis has particularly impacted groups in situations of exclusion and historical discrimination, such as children and adolescents, women, older persons, indigenous and Afro-descendant peoples, persons with disabilities and who are ill, and those living in poverty.

Additionally, the IACHR has expressed its concern over Venezuela’s decrees closing the borders with Colombia in August 2015, with Brazil in December 2016, and with Aruba, Curaçao and Bonaire in January 2018, under the Declaration of a State of Exception in the border area. This situation hinders the right of all people to leave the Venezuelan territory freely, as well as the right to request and receive asylum, complementary protection, or other international protection. On the other hand, as a consequence of food insecurity and the shortage of medicines, the IACHR has observed the daily crossing of borders by Venezuelans to neighboring countries in search of food and medicine.

According to figures from the United Nations High Commissioner for Refugees (UNHCR), as of January 31, 2018, there were 133,574 asylum applications from Venezuelans, while 350,861 Venezuelans had obtained other legal migration alternatives, primarily in Colombia, Brazil, Peru, Ecuador, the United States of America, Panama, Costa Rica, Trinidad and Tobago, Mexico, Argentina, Chile, Uruguay, and Canada, as well as other countries.

Given the lack of legal, regular and safe channels to migrate, many people have had no other option but to resort to clandestine channels and irregular migration, via risky land and sea routes. On many occasions, these individuals are unaware of their rights or status as persons subject to

international protection. Additionally, many are in situations of particular vulnerability which should be addressed through a differentiated approach and the adoption of special protection measures.

The IACHR recognizes the importance of the measures adopted by several States in the region to address the situation, in particular the regularization of migration status through various visas and temporary residence permits, recognition as refugees under the Cartagena Declaration on Refugees of 1984, and the protection of political dissidents in some embassies in Caracas.

At the same time, the IACHR observes that in the context of the forced migration crisis that the Venezuelan people face, there are gaps in protection for the effective enjoyment of human rights. Among these, the IACHR is concerned about practices such as rejections at the border, collective expulsions or deportations; the difficulty that many Venezuelans face to obtain passports or other official documents required by some States to regularize their status or enter their territories, as well as to pay the cost of visa applications; and equal access to rights in destination countries.

Among the many challenges that Venezuelans face when migrating, the IACHR also highlights obstacles to obtaining international protection, discrimination, threats to life and personal integrity, sexual and gender-based violence, abuse and exploitation, human trafficking, disappearance of migrants and refugees, the discovery of clandestine graves in border areas and along migration routes with remains that are presumed to be of Venezuelan individuals, and the lack of identity documents, as well as obstacles in access to humanitarian assistance, particularly access to housing, health, food, education and other basic services. The IACHR has also received information about cases of foreigners who acquired Venezuelan nationality and were later arbitrarily deprived of it, as well as the risk of statelessness faced by the children of Venezuelans who have irregularly entered other countries.

In addition, the IACHR has received information that criminal organizations are exploiting recently arrived Venezuelan individuals in some border areas. Indigenous peoples, such as the Wayuu, Warao, and Yukpa have also been affected, being forced to leave their territories. They must travel long distances and are usually in a greater situation of vulnerability because they do not have the resources to buy food or look for housing, and do not speak the local language.

The IACHR also has information regarding serious xenophobic and discriminatory practices against Venezuelans in countries of transit and destination, including insults, abuses by authorities and individuals, extortion, and rhetoric that stigmatizes and criminalizes Venezuelans by blaming them for increases in rates of violence and taking jobs away from nationals. Likewise, as a result of their situation of extreme vulnerability and poverty, many Venezuelans are more exposed to becoming victims of human trafficking for the purpose of sexual exploitation, forced prostitution, labor exploitation, or servitude and practices similar to slavery, among others.

The IACHR recognizes the important historical tradition of guaranteeing the human right to request and receive asylum on the American continent, as well as the commitment that the region has always shown regarding persons who require international protection. This practice has been codified since the end of the 19th century and has continued to develop at the international level through treaties such as the Convention on the Status of Refugees of 1951 and its 1967 Protocol, the American Declaration on the Rights and Duties of Man of 1948, and the American Convention on Human Rights of 1969.

The right to request and receive asylum has evolved in the Americas since the adoption of the Cartagena Declaration on Refugees of 1984, which expanded the definition of refugee by recognizing as refugees those who have fled their countries due to widespread violence, foreign aggression, internal conflicts, massive violations of human rights, or other circumstances that have seriously disrupted public order. This expanded definition of a refugee has been integrated into the legislation of a large number of countries, as well as by the organs of the Inter-American Human Rights System. In addition, a large number of states in the region reaffirmed their commitment to provide protection to people in need and recognized new challenges facing the Americas in the area of forced migration, such as internal displacement and forced movement due to causes other than those foreseen in the Cartagena Declaration, through the Declaration and Plan of Action of Brazil "A Framework for Regional Cooperation and Solidarity to Strengthen the International Protection of Refugees, Displaced Persons and Stateless Persons in Latin America and the Caribbean" of 2014.

The IACHR recalls the commitment and historical solidarity of the Venezuelan State and people as one of the most welcoming countries in providing protection and shelter to hundreds of thousands of refugees and migrants from multiple countries in the Americas and other continents. On the other hand, the IACHR recognizes that the serious humanitarian crisis that Venezuela is facing will continue as long as serious human rights violations persist. In the opinion of the IACHR, the serious and complex crisis of the forced migration of Venezuelans to other countries has a cross-border scope and as such requires a regional and international response based on shared responsibility and respect for and the guarantee of human rights. With this understanding, OAS Member States and the international community must continue and strengthen humanitarian assistance for those who remain in Venezuela, while at the same time guaranteeing that Venezuelans who have been forced to migrate to other countries obtain the protection they require.

In virtue of the foregoing and in application of Article 41.b of the American Convention on Human Rights and Article 18 of the Statute of the Inter-American Commission on Human Rights, the IACHR resolves to urge the OAS Member States, within a framework of shared responsibility and in conjunction with the international community, to:

1. Guarantee the recognition of refugee status to Venezuelan people with a well-founded fear of persecution in case of return to Venezuela, or who consider that their life, integrity or personal freedom would be threatened due to the situation of violence, massive violations of human rights, and serious disturbances of public order, under the terms of the Cartagena Declaration on Refugees of 1984. This recognition must be granted through fair and efficient proceedings that guarantee the right of asylum seekers to receive assistance to satisfy basic needs or allow them work to sustain themselves while their claims are under study. It must also have a differential approach to respond to the specific needs of children, women, older persons, indigenous communities, people with disabilities, gay, lesbian, bisexual, trans and intersex (LGBTI) persons, journalists, human rights defenders, and other groups with specific protection needs.
2. Given the possible mass movements of Venezuelans to border regions of other countries, consider the adoption of collective protection responses for the Venezuelan people, including the possibility of a *prima facie* or group determination of refugee status, which implies the collective or group recognition of individuals as refugees, without the need for an individualized evaluation.

3. Guarantee entry to the territory for Venezuelans to seek international protection or satisfy urgent humanitarian needs, including recognition of refugee status. Likewise, adopt measures to guarantee family reunification for Venezuelans.
4. Respect the principle and right to *non-refoulement* to the territory of Venezuela, whether through deportation proceedings, expulsion, or any other action of the authorities, of Venezuelans who would be in danger of persecution or other serious violations of human rights—including serious risk to their health or life due to medical conditions—in accordance with the right to *non-refoulement* established in Article 22.8 of the American Convention on Human Rights, Article 13 of the Inter-American Convention to Prevent and Punish Torture, and the American Declaration on the Rights and Duties of Man. The foregoing includes the prohibition of rejection at the border and the prohibition of collective expulsions.
5. Implement mechanisms to identify persons who require international protection and persons in a situation of vulnerability or with special protection needs.
6. Expand regular, safe, accessible and affordable channels for migration through the progressive expansion of visa liberalization and easily accessible visa facilitation regimes and/or measures such as complementary protection, temporary protection, humanitarian visas, family reunification, visitor, work, resident, retirement, and student visas, and private sponsorship programs. These channels should be legally and economically accessible, which includes ensuring accessibility for Venezuelans who, for reasons beyond their control, do not have the documentation that is usually required for these procedures.
7. Protect and provide humanitarian assistance to Venezuelans within national jurisdictions. Ensure that international organizations such as UNHCR, the UN Children’s Fund (UNICEF), UN Women, the International Organization for Migration (IOM), the World Food Program (WFP), the Pan-American Health Organization (PAHO-WHO), as well as other relevant international and regional organizations, national human rights institutions, and civil society organizations, are able to provide humanitarian assistance to Venezuelans.
8. Adopt measures to guarantee international support and share responsibility in rescuing, receiving, and hosting Venezuelans. States should establish mechanisms to strengthen and coordinate search and rescue operations, investigation and forensic protocols, dignified treatment of the dead, identification and tracing of families through the safe exchange of ante-mortem, post-mortem and DNA information.
9. Guarantee access to the right to nationality for stateless persons, as well as for children of Venezuelans born abroad who are at risk of being stateless under Article 20 of the American Convention on Human Rights, the Convention on the Rights of the Child, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. To achieve this, it is essential to guarantee and facilitate the registration of all births in a timely and delayed manner and to ensure access to nationality. Likewise, States must guarantee the existence of statelessness determination procedures as well as the granting of documentation proving nationality.
10. Implement a coordinated regional and international strategy based on shared responsibility and a human rights approach to address the rapidly developing and massive situation of persons forced to migrate from Venezuela. Strengthen technical and financial assistance to

the main countries that receive Venezuelans, ensure and facilitate the free passage of humanitarian assistance, and grant persons engaged in the provision of such assistance rapid and unimpeded access.

11. Do not criminalize Venezuelan migration, avoiding the adoption of measures such as the closing of borders; penalties for irregular entry or presence; the requirement to present a passport in order to obtain international assistance and protection; immigration detention; and hate speech. Likewise, refrain from criminalizing or punishing people who provide aid and humanitarian assistance to Venezuelans. To prevent discrimination and xenophobia against Venezuelans, States must implement positive measures such as educational and awareness campaigns aimed at promoting multicultural societies and fighting against discrimination and xenophobia.
12. Guarantee equal access to justice, including cross-border justice for human rights violations under fair, effective, and accessible conditions. It is necessary to conduct effective investigations, prosecute and, as appropriate, punish the perpetrators of such violations. Additionally, it is essential to investigate all cases of deaths and disappearances, as well as of migrants in mass graves, with the cooperation of the authorities of all the States involved. Similarly, integral reparation should be guaranteed for any harm caused.
13. Provide a coordinated and integrated response to prevent, address, and ensure reparations for victims of human trafficking, and investigate, prosecute and punish this crime.
14. Implement measures to promote social integration and the resilience of Venezuelans, particularly by guaranteeing the rights to nondiscrimination, as well as economic, social, and cultural rights, including the right to work, education and social security.
15. Authorize and provide the necessary facilities for the IACHR to make visits to OAS member States to monitor the situation of Venezuelans and to provide assistance and technical cooperation regarding their human rights.

Finally, the IACHR reiterates to the States of the region its willingness to provide technical cooperation in the preparation and implementation of public policies, laws and practices aimed at addressing the migration and international protection needs of Venezuelans; to guarantee the right to seek and receive asylum; as well as to provide and facilitate humanitarian aid and measures for the integration and resilience of Venezuelans.

Approved in Bogotá, Colombia, within the framework of its 167th session, on the 2nd day of the month of March 2018.