

"PREVENTION THROUGH DETERRENCE" AGAINST CITIZENS

the Venezuela-Colombia Border during the COVID-19 Pandemic and
Human Rights Implications

By

Andreina Negretti Benito

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ABSTRACT

NEGRETTI BENITO, ANDREINA - "Prevention through Deterrence" Against Citizens: the Venezuela-Colombia Border during the COVID-19 Pandemic and Human Rights Implications

ADVISOR: LEO ZAIBERT

This thesis analyses the human rights implications of the measures taken by the Venezuelan government at the Venezuelan-Colombian border during the COVID-19 pandemic. I will argue that the goal of these measures is preventing or impeding the return of citizens through "deterrence techniques" that have been historically used by other countries. This case's importance relies on the fact that, unlike other cases, the Venezuelan government uses these "techniques" against its own nationals, rather than against unwanted immigrants. The first chapter will provide an overview of the theoretical framework concerning migration, arguments regarding open borders, and human rights protections. This will allow me to consider internationally established definitions, principles, and agreements, both in customary and conventional law, in the analysis of the Venezuelan case. The second chapter will describe the pre-existent waves of emigration in Venezuela, the current situation, and the international response to the on-going crisis, which will explain underlying causes of current migration movements. The third chapter will discuss the impact of COVID-19 in Colombia and Venezuela and the measures taken by each government, including a comparison between the declared states of emergency. Different factors like access to health services, working conditions, xenophobia, and discrimination, will be an important component as I highlight the erosion of migrants' rights and raise concerns regarding potential human rights violations. In the fourth chapter I will examine the Venezuelan response to returnees and compare Maduro's government's questionable measures to traditional "prevention through deterrence" strategies, highlighting the deleterious human rights effects of the former.

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TABLE OF CONTENTS

Abstract.....	ii
Acknowledgements.....	iii
INTRODUCTION.....	1
CHAPTER ONE: Migration: Theoretical Framework	
Right to Freedom of Movement.....	4
Migrants.....	7
Domestic Immigration Laws and Human Rights.....	11
Freedom of Association and Border Control.....	13
Right to Return (as a citizen).....	16
CHAPTER TWO: The Venezuelan Case	
Waves of Venezuelan Emigration.....	19
The Venezuelan Situation.....	22
The International Response.....	35
CHAPTER THREE: The COVID-19 Pandemic	
Immigration and COVID-19 in Colombia.....	38
State of Emergency: Venezuela and COVID-19.....	43
CHAPTER FOUR: Prevention Through Deterrence and Human Rights	
Prevention Through Deterrence Techniques.....	49
Venezuelan Response to Returnees and Human Rights Implications.....	52
CONCLUSION.....	59
Bibliography.....	62

INTRODUCTION

Venezuela has gone from being called "the land of opportunities"—in reference to the great amount of immigration and what it had to offer to this new population of migrants—to experiencing massive emigration of its own citizens due to the lack of opportunities once existent. For roughly twenty years, Venezuela has experienced the concept of "crisis" in almost every single sense of the term. Massive violation of human rights, political instability, shortages and lack of food and other basic products, crime and corruption, a severely malfunctioning healthcare infrastructure, a destroyed economy with high levels of hyperinflation, high poverty rates, malnutrition... are some of the components of this crisis. As a result, many—inordinately many—Venezuelans have been forced to find a way to survive and subsist. For many the solution has been to migrate to other countries.

During approximately the past 6 years, Venezuelans have migrated all over the world. Some have been able to migrate to Europe, others to the United States, but most of these citizens have had to look for geographically closer opportunities since, for example, it would be a major financial burden to travel a long distance away from their home country. Therefore, Latin American countries have become the center of Venezuelan immigration. Physical geographical borders have played an important role since, as previously mentioned, it is "easier" to migrate to a closer country. Especially, considering that many of these migrants do not count with the resources to pay for transportation and many of them have to walk very long distances and for long periods of time through harsh conditions to get to their new destination. This fact attests to the degree of desper-

tion of many Venezuelan citizens, who opt to leave their country, through dangerous and uncertain journeys, seeking a better quality of life.

Not surprisingly, during this period, Colombia—who has the largest "live" border with Venezuela—has received a very large number of Venezuelan immigrants. (Venezuelans typically refer to Colombia as "la hermana república," i.e., the sister republic, and this highlights the intimate connection between the two nations and their inhabitants). This most important of Venezuela's neighboring countries has implemented measures to try help and assist these migrants; however, the COVID-19 pandemic has worsened the situation not only for one country but for the whole world. After the pandemic started in March 2020, many countries declared a state of emergency and everyone entered a new realm of uncertainty. Within Venezuelan borders, the situation rapidly worsened, even more than its pre-existent crisis would have predicted; and the situation of the undocumented or "irregular" Venezuelan migrants in Colombia did as well. This is due to the economic collapse brought about by the imposed lockdowns, the lack of access to health services, and by discrimination and xenophobia, among other factors. Consequently, many Venezuelan migrants had to face the difficult choice of staying in Colombia or returning to their home country. Given the highly unusual circumstances brought about by the pandemic many have chosen the latter.

Many Venezuelan citizens have returned—or at least tried to return—to their country of origin after the COVID-19 pandemic started. One would think that one will never be denied access into their own country, since it is a basic moral principle, also en-

shrined in many international documents, including the *Universal Declaration of Human Rights* (UDHR).¹ However, the Venezuelan government has been implementing questionable measures that could be compared to those outlined and applied in the "Border Patrol Strategic Plan 1994 and Beyond," published in the United States in the mentioned year.² The United States has applied these measures in order to prevent immigrants from coming into their national territory. Astonishingly, Maduro's administration has not been applying these so-called techniques to deter foreigners from entering Venezuela, but to impede its own nationals or citizens from returning into their own country, thus violating international law. The human rights implications of the measures that the Maduro regime has either applied or threatened to apply are shocking and worrisome, and, in fact, the international community has denounced some of them as crimes against humanity.³ As it turns out, Venezuela has for many years been accused of many human rights violations and other abuses to its citizens.⁴ Some of these measures have included considering stripping returnees of their nationality and property, forcing them into conditions where they are exposed to the COVID-19 virus, and setting limits on how many Venezuelan citizens can enter the country in a day. In consequence, Nicolas Maduro is not only violating international law and agreements that the country has ratified, he is also violating other human rights of his own fellow citizens.

¹ Universal Declaration of Human Rights, article 13(2), 1948.

² U.S. Border Patrol, "Border Patrol Strategic Plan 1994 and Beyond," July, 1994.

³ United Nations Human Rights Office of the High Commissioner, "Venezuela: UN report urges accountability for crimes against humanity," 2020.

⁴ Amnesty International, *Venezuela 2019*.

Human Rights Watch, "World Report 2021: Venezuela, Events of 2020," 2021.

CHAPTER I: **MIGRATION: THEORETICAL FRAMEWORK**

Right to Freedom of Movement

"*La Déclaration des droits de l'homme et du citoyen de 1789*," a foundational human civil rights document from the French Revolution, established the first modern formulation of the right to liberty and its importance.⁵ The right of freedom of movement and the right to migrate were not expressly stated in this document; however, the notion of them originated within the seminal interpretation of the right to liberty in the declaration.⁶ The notion of liberty during this period of time in France was of great importance since censorship and oppression had reigned during the Monarchic period. Hence, article 4 stated that "liberty consists in the freedom to do everything which injures no one else; hence the exercise of the natural rights of each man has no limits except those which assure to the other members of the society the enjoyment of the same rights. These limits can only be determined by law."⁷ Later, the *French Constitution of September of 1791* included the rights of the previous declaration and also guaranteed the "freedom of everyone to go, to stay, or to leave, without being halted or arrested in accordance with procedures established by the Constitution."⁸ Consequently, this article of the first French Constitution was the first document to explicitly introduce the idea of the right to move freely.

⁵ La Déclaration des droits de l'homme et du citoyen de 1789, 1789.

⁶ McAdam, Jane, "An Intellectual History of Freedom of Movement in International Law: The Right to Leave as a Personal Liberty," *Melbourne Journal of International Law*, Vol 12, 2011, pp. 12.

⁷ La Déclaration des droits de l'homme et du citoyen de 1789, article 4, 1789.

⁸ La Constitution du 3 Septembre 1791, Title 1, 1791.

A century-and-a-half later, on May 2nd of 1948, this right was proclaimed in the *American Declaration of the Rights and Duties of Men*. Specifically, article VIII states that "every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will."⁹ Subsequently, the *Universal Declaration of Human Rights* (UDHR) on December 10th of the same year, asserted the right to "freedom of movement" in article 13(1) and 13(2). Both these articles state both that everyone "has the right to freedom of movement and residence within the borders of each state" and that everyone has "the right to leave any country, including his own, and to return to his country".¹⁰ Thus, through this declaration, not only is the general right to freedom of movement officially recognized by the international community as a fundamental human right that needs to be universally protected, but so is the specific right to return to one's country. Moreover, article 12 of the *International Covenant on Civil and Political Rights* (ICCPR) of 1966 further expands on it and states the following: "(1) Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence, (2) Everyone shall be free to leave any country, including his own, (3) The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant, [and] (4) No one shall be arbitrarily deprived of the right to enter his own country."¹¹

⁹ The American Declaration of the Rights and Duties of Man, article VIII, 1948.

¹⁰ Universal Declaration of Human Rights, article 13, 1948.

¹¹ International Covenant on Civil and Political Rights, article 12, 1966.

Furthermore, in the *General Comment No 27 of the Human Rights Committee of 1999*, the right to freedom of movement is again stated and discussed. In this document it is asserted that "liberty of movement is an indispensable condition for the development of a person" and that the permissible limitations on this right "must not nullify the principle of liberty of movement."¹² Other declarations and international documents, such as *The Convention on the Rights of the Child* (article 10), the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (articles 5, 8, and 39), the *Convention on the Rights of Persons with Disabilities* (articles 9 and 18), and the *African Charter on Human and Peoples' Rights* (article 12), also expand on this freedom and express the importance of its compliance.¹³ In support of this right, Joseph Carens highlights that "no liberal state restricts internal mobility. Those states that do restrict internal mobility are criticized for denying basic human freedoms."¹⁴ Thus, he proceeds to argue that there are no legitimate grounds to restrict freedom of movement across states, if "freedom of movement within the state is so basic that it overrides the claims of local political communities."¹⁵

¹² CCPR General Comment No. 27: article 12 (Freedom of Movement), 1999, pp. 1.

¹³ Claiming Human Rights, "Definitions of the Right of Freedom of Movement," 2009.

¹⁴ Carens, Joseph, "Aliens and Citizens: The Case for Open Borders," 1987, pp. 267.

¹⁵ Carens, Joseph, 1987, pp. 267.

Migrants

Even though there is no official international legal definition of what a migrant is, the United Nations Department of Economic and Social Affairs defines it as "someone who changes his or her country of usual residence, irrespective of the reason for migration or legal status."¹⁶ In addition, the term "crisis migration" was coined in order to refer to the forms of mobility that occur in the context of a humanitarian crisis, implying the coexistence of four elements: a certain causality, geography, temporality, and vulnerability.¹⁷ The causality of the movement encompasses "processes that slowly erode livelihoods [that could lead] to anticipatory movements, which often are perceived as voluntary migration" and the geographic dimension could translate to the repetition of the same challenges in the new destination due to factors such as geographical proximity.¹⁸ The temporality element will include stages such as the pre-crisis, the stage where the crisis cannot be prevented, and the migration "in anticipation with worsening conditions."¹⁹ Finally, the vulnerability dimension will consist in "the level of vulnerability [of the population] and its corollary, resilience."²⁰ Since there exist many different reasons why an individual or a group thereof may migrate from or to their country of origin or residency it is of singular importance to consider the elements described above when analyzing any kind of migration. In addition, and for the purposes

¹⁶ United Nations, Toolkit on International Migration, Department of Economic and Social Affairs, 2012, pp. 2.

¹⁷ Gandini, Prieto Rosas; and Lozano-Ascencio. "Nuevas Movilidades En América Latina: La Migración Venezolana En Contextos De Crisis Y Las Respuestas En La Región." *Cuadernos Geográficos De La Universidad De Granada*, vol. 59, no. 3, 2020, pp. 103-121.

Martin, S., Weerasinghe, S., & Taylor, A., *Crisis Migration, The Brown Journal of World Affairs*, 2013, pp.123- 137.

¹⁸ Gandini, Prieto Rosas; and Lozano-Ascencio, 2020, pp. 103-121.

¹⁹ Gandini, Prieto Rosas; and Lozano-Ascencio, 2020, pp. 103-121.

²⁰ Martin, S., Weerasinghe, S., & Taylor, A., 2013, pp. 126-131

of this thesis, it is essential to engage in a deeper examination of the concept of a humanitarian crisis, since this will provide a better understanding of the elements involved in those migrations.

According to a guide issued by the International Commission of Jurists, different groups of migrants can be identified as: regular migrants, undocumented migrants, asylum seekers or refugees, and other migrants needing protection.²¹ First, the broad category of "regular migrants" is defined in this guide as "migrants who enter the State after having obtained an authorization, whether temporary or not, by the destination State."²² Second, "undocumented migrants" are defined as "migrants who enter the State in an irregular fashion, without having the proper documentation; or migrants who entered in a regular fashion whose authorization has expired and who have remained, nonetheless, in the national territory."²³ Third, "asylum seekers and refugees" are described as "migrants who enter a country, whether regularly or irregularly, in order to escape persecution in their country of origin as defined by article 1(A) of the *Geneva Refugee Convention*."²⁴ Finally, the category of "other migrants needing protection" "includes several kinds of migrants whose status is not well-defined but who are in need of international protection, recognized, to varying extents, by international law."²⁵ This category comprises migrants with a "stateless" status, victims of human trafficking, smuggled individuals, unaccompanied children whose status is unknown, failed asylum-seekers or "undocumented migrants who cannot be expelled due to principle of

²¹ International Commission of Jurists, *Migration and International Human Rights Law: A Practitioners' Guide*, 2014, pp. 39-40.

²² Martin, S., Weerasinghe, S., & Taylor, A., 2013, pp. 126-131

²³ Martin, S., Weerasinghe, S., & Taylor, A., 2013, pp. 126-131

²⁴ Martin, S., Weerasinghe, S., & Taylor, A., 2013, pp. 126-131

²⁵ Martin, S., Weerasinghe, S., & Taylor, A., 2013, pp. 126-131

non-refoulement," and others.²⁶ The principle of non-refoulement, contained in article 33 of the *1951 Refugee Convention*, establishes that individual must not be returned to countries where they may face torture or risks to their "life[s] or freedom[s]."²⁷ Furthermore, it is of high importance to recognize that the status of the individual might change, either because of the given circumstances or by personal choice of the migrant.

In addition, article 14(1) of the UDHR states that "everyone has the right to seek and to enjoy in other countries asylum from persecution."²⁸ According to the United Nations High Commissioner for Refugees (UNHCR), a refugee is defined as "someone who has been forced to flee his or her country because of persecution, war or violence. [An individual with] a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group."²⁹ The *1951 Refugee Convention* and its *1967 Protocol*, responded to this persecution based on race, religion, nationality, membership in a particular social group, or political opinion and gave a basis or rationale for the rights of refugees, as well as the legal obligations of States to protect them.³⁰ An asylum seeker is then defined as a "person within a State party [i.e., a state that has signed the Convention] who has applied for recognition as a refugee. If the asylum seeker is determined to meet the definition of a refugee they are granted asylum."³¹

²⁶ International Commission of Jurists, 2014, pp. 39-40.

²⁷ The *1951 Refugee Convention*, article 33, 1951.

²⁸ Universal Declaration of Human Rights, article 14, 1948.

²⁹ UNHCR, *The Refugee Convention and Protocol*, 1951, pp. 3.

³⁰ UNHCR, *The Refugee Convention and Protocol*, 1951.

³¹ International Justice Resource Center, "Asylum and the Rights of Refugees"

Moreover, the *Cartagena Declaration on Refugees*, a non-binding regional declaration of special importance in Colombia and Venezuela, made advances in the Latin American context in terms of strengthening protections towards refugees. It expanded the *1951 Refugee Convention* and defined refugees as people forced to flee their country “because their lives, security, or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights, or other circumstances which have seriously disturbed public order.”³² Some Latin American countries—such as Brazil, Argentina, Ecuador, Colombia, and others—have aligned their domestic policies with the *1951 Refugee Convention*, the *1967 Protocol*, and the *Cartagena Declaration on Refugees* and have also included the broader definition of "refugee" into them.

³² Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 1984, pp. 3.

Domestic Immigration Laws and Human Rights

While immigration policies are guided by international treaties, conventions, and declarations, it is in the end the sovereign state that constitutes the ultimate entity that determines who is allowed to immigrate into its borders. No international document suggests the existence of a capacious right for anyone to enter *any* country for *any* reason.³³ Nevertheless, international documents that protect migrants—regardless of their status—do exist: from refugees to migrant workers, the rights of this individual must be protected and respected as they are, for example, recognized as inalienable rights by the UDHR. Specifically, several documents grant rights to migrants merely by virtue of migrants' humanity. Some of these are: the *International Convention on the Elimination of All Forms of Racial Discrimination* (1963), the *International Covenant on Economic, Social and Cultural Rights* (1966), the *International Covenant on Civil and Political Rights* (1966), the *Convention on the Elimination of All Forms of Discrimination against Women* (1979), the *Convention against Torture and Other Cruel, the Inhuman or Degrading Treatment or Punishment* (1984), the *Convention on the Rights of the Child* (1989), the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (1990), the *Convention on the Rights of Persons with Disabilities* (2006), and the *International Convention for the Protection of All Persons from Enforced Disappearance* (2007).³⁴

³³ Heath Wellman, Christopher, "Freedom of Movement and the Rights to Enter and Exit," *Migration in Political Theory: The Ethics of Movement and Membership*, Oxford University Press, 2016, pp. 80.

³⁴ Migration Data Portal, "Migrants Rights," 2020. <https://migrationdataportal.org/themes/migrant-rights>

In addition, the right of people to move freely and to seek refuge and asylum in several specific cases, such as persecution, war, or violence is asserted in the *Universal Declaration of Human Rights* and many other international instruments. Consequently, various international resources recognize that the migrant is a subject of rights and often describe certain special protections when dealing with vulnerable situations.³⁵ Some of these key documents are the International Labour Organization (ILO) *Convention no. 97 concerning Migration for Employment* (1949), the previously mentioned *Convention relating to the Status of Refugees* (1951) and its *1967 Protocol*, the *Convention Relating to the Status of Stateless Persons* (1954), the *Convention on the Reduction of Statelessness* (1961), the *International Convention for the Safety of Life at Seas* (1974), *ILO Convention no. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers* (1975), the *International Convention on Maritime Search and Rescue* (SAR) (1979), *United Nations Convention on the Law of the Sea* (1982), the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (2000), the *Protocol against the Smuggling of Migrants by Land, Sea and Air* (2000), and the *Convention concerning Decent Work for Domestic Workers* (2011).³⁶

³⁵ International Justice Resource Center, "Immigration and Migrants' Rights"

³⁶ Migration Data Portal, 2020.

Freedom of Association and Border Control

In addition to the existence of these instruments in the international arena, experts and academics have developed arguments regarding the right of a state to close, or open, their borders to immigration. Philosopher Christopher Heath Wellman supports the theory that states possess and enjoy the right of freedom of association, and consequently hold the right to control immigration over their territorial borders.³⁷ Wellman bases his argument on proving the importance of this right on an individual level as well as a group's entitlement to the aforementioned. He also acknowledges some clear differences between the individual and the collective levels, and explores some possible counterarguments to his theory. However, he ultimately argues that states being groups of citizens, translates to the right of association—or in this case disassociation, or the right to exclude—of the state itself since it is a group of citizens allowed to exercise their right to self-determination. He supports the right of a country to even "close its doors to all potential immigrants, even refugees desperately seeking asylum" and instead choosing to "export justice."³⁸ He proceeds to explain this could be done through intervention, either by sending aid to the countries suffering from poverty or intervening, militarily if necessary, in "incompetent or corrupt political regimes that are either unable or unwilling to protect their citizens' basic moral rights."³⁹ However, , as the title of her essay states, philosopher Sarah Fine discusses why she believes that *Freedom of Association is not the answer* and, therefore, Heath Wellman's case does not provide enough evidence—or

³⁷ Heath Wellman, Christopher, "Immigration and Freedom of Association," *Ethics*, The University of Chicago, 2008, pp. 109-141.

³⁸ Heath Wellman, 2008, pp. 109 and 129

³⁹ Heath Wellman, 2008, pp. 109

sufficiently compelling arguments—as to why a country should enjoy such an extensive right to limit, and prohibit, immigration into its territory. For one of her main arguments against this theory, Fine quotes Wellman's conviction that individuals "should be allowed to choose freely when [their behavior] is not harmful to others," however she argues that "exclusion from the state obviously has the potential to harm the interests of others."⁴⁰ If would-be immigrants, or specifically refugees, live in terrible and unacceptable conditions, then it would cause greater harm to exclude them. She argues that in these circumstances there is a moral obligation to let them into a new country. Additionally, she quotes Carens and raises the concern that "people might have powerful reasons to want to migrate from one state to another."⁴¹ Her following argument, outlined in section IV of her essay, highlights the importance of a "justification of the state's territorial rights."⁴² She explains that Wellman's argument raises a question about the state's relationship to its territory, which she believes Wellman does not consider this relationship as one of ownership. Therefore, the question of whether "citizens and/or their states have the relevant rights over the territory from which they wish to exclude others and thus whether they are within their rights not just to control the rules of membership but also to control settlement" needs to be addressed by Wellman in order to build a more compelling argument.⁴³ In conclusion, she believes that freedom of association alone cannot be the only defense in the case of a state restricting access and excluding individuals from its

⁴⁰ Heath Wellman, 2008, pp. 128-129

Fine, Sarah, "Freedom of Association Is Not the Answer*," The University of Chicago, 2010, pp. 355-356.

⁴¹ Carens, Joseph, 1987, pp. 258.

⁴² Fine, Sarah, 2010, pp. 340.

⁴³ Fine, Sarah, 2010, pp. 354.

territory and, therefore, it cannot "deliver a right" for the exercise of the
aforementioned.⁴⁴

⁴⁴ Fine, 2010, pp. 356.

Right to Return (as a Citizen)

The consideration of the debate between Wellman and Fine offers us the opportunity to reflect on the possibility of a state having the right to control their territorial borders and, thus, deny or restrict entry to immigrants. However, it is important to note that only "immigrants" are mentioned in these scenarios, which allows us to assume that citizens should not have any problems when leaving or entering their country of nationality—a principle that is also in accordance to the letter and spirit of the legal instruments I have mentioned above. In fact, international law has outlined this right and how "no one shall be arbitrarily deprived of the right to enter his [or her] own country."⁴⁵ Crucially, as mentioned previously, article 13(2) of the UDHR states that every individual has "the right to...return to his country."⁴⁶ The *European Convention for the Protection of Human Rights and Fundamental Freedoms* mentions in article 3(2) of Protocol No. 4 that "no one shall be deprived of the right to enter the territory of the State of which he is a national."⁴⁷ The *International Convention on the Elimination of all Forms of Racial Discrimination* supports and reiterates the existence and importance of this right in article 5(d)(ii).⁴⁸ The *Strasbourg Declaration on the Right to Leave and Return* describes how "permanent legal residents who temporarily leave their country of residence shall not be arbitrarily denied the right to return to that country."⁴⁹ These are some of the international documents that outline the right of a citizen or national to return to their country; its

⁴⁵ *International Covenant on Civil and Political Rights*, article 12, 1966.

⁴⁶ Universal Declaration of Human Rights, article 13(2), 1948.

⁴⁷ European Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol No. 4, article 3(2), 1953.

⁴⁸ International Convention on the Elimination of all Forms of Racial Discrimination, article 5(d)(ii), 1969.

⁴⁹ *Strasbourg Declaration on the Right to Leave and Return*, 1986

repetition throughout treaties and international documents implies the importance of its implementation and practice.

According to Hurst Hannum, an expert in international law, "the right to return to the country of which one is a citizen—to return home—is equally fundamental [as the right to leave one's country] in exercising one's personal autonomy."⁵⁰ Moreover, he mentions how restrictions in such rights are considered legitimate if "imposed for limited purposes in a fair a non-discriminatory manner," and mentions the prevention of the spreading of a disease as an example.⁵¹ However, this exemption will be discussed to provide an argument as to why this does not apply to the Venezuelan case. In addition to the previously mentioned international instruments, article 50 of the Venezuelan Constitution acknowledges that "every person [has the right to] move freely and by any means through the national territory, change their domicile and residence, leave the Republic and return...with no limitations other than those established by law...Venezuelans may enter the country without the need for any authorization. No act of the Public Power may establish the penalty of being banished from the national territory against Venezuelans."⁵² First, this constitutional article unequivocally states the right to freedom of movement inside and outside of the national borders. Second, this article unequivocally recognizes the right to return as a citizen without the need of an authorization or any kind of permission, thus being in accordance with the international

⁵⁰ Hannum, Hurst, *The Right to Leave and Return in International Law and Practice*, Martinus Nijhoff Publishers, 1987, pp. 4.

The US Supreme Court's decision on the case *Tropp v Dulles*, which concluded on the idea of expatriation as a cruel and unusual penal remedy, will be later discussed to support the importance of citizenship and its attendant rights.

⁵¹ Hannum, Hurst, 1987, pp. 4.

⁵² Constitución de la República Bolivariana de Venezuela, article 50, 1999.

law resources exposed above. Finally, the article unequivocally asserts that there is no such thing as the possibility of a citizen being banished from his or her own country.

CHAPTER II: **THE VENEZUELAN CASE**

Waves of Venezuelan Emigration

According to a report that studied the Venezuelan migration trends from 2000 to 2017, the country has faced three different waves of emigration since President Hugo Chávez took power in 1999.⁵³ Factors such as "growing insecurity, political tensions, nationalization of various industries, and social polarization after a failed coup d'etat attempt in 2002" were the main cause of the first identified wave (2000-2012).⁵⁴ It is important to note that the previously mentioned coup d'etat is a contested issue since it was defined by the Supreme Court as a "power vacuum" or "power void."⁵⁵ This term is used to refer to the absence of government, or in this case head of state, in specific circumstances like a military coup, but also like a resignation—and Chavez's Minister of Defense did address the nation informing that Chavez had resigned.⁵⁶ Given the circumstances, this emigration wave was largely composed of a middle-class population of entrepreneurs and students who migrated mostly to the United States and Europe, specifically Spain, Italy, and Portugal, "seeking new opportunities."⁵⁷ The second identified wave (2012-2015) was caused by the collapse of the commodities boom and Chávez's reelection as president for the 2007-2013 presidential term. The aforementioned commodities boom was the period where Latin America experienced a significant boost

⁵³ Vivas Peñalver, Leonardo; Paez, Tomas, "The Venezuelan Diaspora, Another Impending Crisis?," Freedom House, 2017, pp. 2.

⁵⁴ Feline Freier, Luisa, and Nicolas Parent, "The Regional Response to the Venezuelan Exodus," New York, 2019, pp. 57.

⁵⁵ Sentencia n° 38 del Tribunal Supremo de Justicia - Sala Plena de 19 de Septiembre de 2002, 2002.

⁵⁶ "Renuncia de Chávez anunciada a Venezuela y al mundo por el Gral. Lucas Rincón Romero 12/04/2002," <https://youtu.be/M8ZAWErMMyU>

⁵⁷ Vivas Peñalver, Leonardo; Paez, Tomas, 2017, pp. 2.

in terms of trade. As a consequence of this collapse, the economic crisis began in earnest and political repression, which had been gradually increasing since Chavez assumed power, increased exponentially in the country. Moreover, serious shortages of food and medicine emerged. In this phase, migrants' profiles were more varied, representing both middle and lower classes. Preferred destinations continue to include the United States and Europe, but added also some nearby countries in Latin America such as Colombia, Panama, and the Dominican Republic as well. This wave is identified as "growing hopelessness."⁵⁸ Furthermore, after Chávez's death in 2013, Nicolás Maduro assumed the presidency and conditions in Venezuela significantly worsened. The third and current phase of Venezuelan emigration started in 2015 as the humanitarian crisis came to its worst point. Authors generally refer to this wave as the "migration of despair."⁵⁹ Several reasons for this migration include, but are not limited to, "scarcity of food and medicines at critical levels; hunger, future compromised by malnutrition, [and] increasing deaths by scarcity; insecurity; [and] political hopelessness".⁶⁰ During this wave, people belonging to all social spectrums have emigrated, however the low-income class has constituted a greater percentage of it given their greater vulnerability.⁶¹

According to data from the UNHCR, at least 133,000 Venezuelans formally requested refugee status in other countries between 2014 and 2017.⁶² However, another 363,000 are added because of other "legal alternatives" offered to Venezuelans especially

⁵⁸ Feline Freier and Parent, 2019, pp. 57.

⁵⁹ Feline Freier and Parent, 2019, pp. 57.

⁶⁰ Feline Freier and Parent, 2019, pp. 57.

⁶¹ Vivas Peñalver, Leonardo; Paez, Tomas, 2017, pp. 2.

⁶² France 24, "Líderes de América se reúnen para analizar la situación de los refugiados," Brasilia, 2018.

by Latin American countries.⁶³ More recently, the R4V Coordination Platform for Refugees and Migrants from Venezuela (R4V Platform) reported on March 5th, 2021, 5,577,077 Venezuelan migrants, refugees, and asylum-seekers reported by host governments.⁶⁴ Venezuela's reported population in 2019, was 28.515.829 individuals according to the World Bank data catalog.⁶⁵ This reveals that the emigration data encompasses a monumentally high number of migrants, considering the size of the Venezuelan population. The flow of Venezuelan citizens forced to travel to neighboring countries to access the most basic goods and needs increased since Maduro assumed the presidency and at least 606,000 Venezuelans had formally sought asylum, mostly in Peru, Brazil and the USA.⁶⁶

⁶³ Heredia, Jassir, Battistessa, Diego, "La nueva realidad migratoria venezolana," *Revista electrónica iberoamericana*, 2018, pp. 5.

⁶⁴ R4V Coordination Platform for Refugees and Migrants from Venezuela, 2021.

⁶⁵ World Bank Data catalog, datacatalog.worldbank.org

⁶⁶ Amnesty International, *Venezuela 2019*.

The Venezuelan Situation

As mentioned previously, the Venezuelan political and human rights crisis, added to a particularly low quality of life, have been the main reason for the last emigration wave during Maduro's presidency. Human rights violations have been constant in the country since Hugo Chavez's assumed the presidency, and non-governmental organizations (NGOs) like Amnesty International and Human Rights Watch have continuously denounced the situation regarding this subject.⁶⁷ In order to expand on the human rights crisis in Venezuela, the following topics will be discussed in the following order: extrajudicial executions, enforced disappearance, arbitrary detentions, excessive use of force and torture methods, lack of judicial guarantee, impunity, criminalization of the opposition, imprisonment of prisoners of conscience, censorship, and violation of the rights of indigenous peoples.

The right to life is both stated and protected under article 3 of the UDHR, article 43 of the Venezuelan Constitution, and many other documents.⁶⁸ Consequently, the deliberate killings that State agents have committed in Venezuela for several years are considered a violation of this right and, therefore, a violation of an inalienable and non-derogable right under International Humanitarian Law. According to a United Nations' report, "even conservative estimates suggest that Venezuela has one of Latin America's highest rates of killings by State agents."⁶⁹ According to the Human Rights

⁶⁷ Amnesty International, *Venezuela 2019*.

Human Rights Watch, "World Report 2021: Venezuela, Events of 2020," 2021.

⁶⁸ Universal Declaration of Human Rights, article 3, 1948.

Constitución de la República Bolivariana de Venezuela, article 43, 1999.

⁶⁹ United Nations Human Rights Office of the High Commissioner, "Venezuela: UN report urges accountability for crimes against humanity," 2020.

Watch report *World Report 2011: Venezuela*, "law enforcement agents allegedly killed 7,998 people between January 2000 and the first third of 2009," which allows us to conclude that these extrajudicial killings started in earnest during Chavez's presidency and have steadily continued to rise during Maduro's administration.⁷⁰ Another report by the Organization of American States (OAS) confirmed 18,093 extrajudicial executions from 2014 to 2020.⁷¹

During 2014, peaceful protests took place after Nicolás Maduro narrowly won the 2013 presidential elections against opposition leader Henrique Capriles Radonski. Later, several events like the death of former Miss Venezuela Monica Spears and her family and the alleged attempted rape of a university student in the state of Táchira took place and caused generalized fear and a feeling of helplessness and rage in the country.⁷² However, these protests were caused by the combination of these events and many other different reasons, such as the increase in violence, political discontent, inflation, shortages of basic goods, and others. These elements led to a set of street protests by students in San Cristóbal, Táchira in February 2014 that later extended to the rest of the country.⁷³ On February 12 of the same year, the Venezuelan opposition called for a march in the country, mainly in Caracas—the capital.⁷⁴ During this protest, and all the following ones until May, extrajudicial executions were recorded while the government alleged “resistance to authority,” starting with the deaths of students Bassil Da Costa and Robert

⁷⁰ Human Rights Watch, *World Report 2011: Venezuela*, 2011.

⁷¹ Organization of American States, “Fostering Impunity: The Impact of the Failure of the Prosecutor of the International Criminal Court to Open an Investigation Into the Possible Commission of Crimes Against Humanity in Venezuela,” Washington, 2020.

⁷² Galluzzo, Mauro, "Venezuela: the most dangerous place on earth?" 4 News, 2014.

BBC, "Venezuela forces 'clear' protest city of San Cristobal," 2014.

⁷³ BBC, 2014.

⁷⁴ Human Rights Watch, "Venezuela: Investigate Violence During Protests," 2014.

Redman.⁷⁵ According to the Venezuelan Observatory of Social Conflict (OVCS), 9,286 protests took place in 2014.⁷⁶ Based on the investigations stated in the Human Rights Council report, it is possible to conclude that extrajudicial killings likely kept happening even after these events ceased, and that the numbers have continued to rise.⁷⁷

Many cases that did not end in extrajudicial killings have led to enforced disappearances, arbitrary detentions, and excessive use of force and torture methods by security forces. The same Human Rights Council report brings to light the fact that Venezuela is a party to the *Inter-American Convention on Forced Disappearance of Persons*, a multilateral treaty that aspires to combat the forced disappearance of individuals.⁷⁸ Moreover, article 45 of the Venezuelan Constitution establishes that "the public authorities, whether military, civilian or of any other kind, even during a state of emergency, exception or restriction or guarantees, are prohibited from effecting, permitting or tolerating the forced disappearance of persons."⁷⁹ Furthermore, article 9 of the ICCPR guarantees the right against arbitrary or unlawful detention and article 44 of the Venezuelan Constitution establishes that personal liberty is inviolable and then proceeds to explain the prohibition of arbitrary detentions.⁸⁰ Finally, article 5 of the UDHR states that "no one shall be subjected to torture or to cruel, inhuman or degrading

⁷⁵ Amnesty International, "Bassil Da Costa Frías: conmemoración de su muerte durante participación en una manifestación del 12F 2014," 2018.

El Nacional, "Los estudiantes recordaron a Bassil Da Costa y Robert Redman el Día de la Juventud," 2021. Human Rights Watch, "World Report 2021: Venezuela, Events of 2020," 2021.

⁷⁶ Human Rights Council, "Detailed findings of the independent international fact finding mission on the Bolivarian Republic of Venezuela," 2020.

⁷⁷ Human Rights Council, 2020.

⁷⁸ Human Rights Council, 2020.

⁷⁹ Constitución de la República Bolivariana de Venezuela, article 45, 1999.

⁸⁰ *International Covenant on Civil and Political Rights*, article 9, 1966.

Constitución de la República Bolivariana de Venezuela, article 44, 1999.

treatment or punishment" and the Venezuelan Constitution also supports this in its 46 article.⁸¹ As it was previously mentioned, enforced disappearances, arbitrary detentions, and excessive use of force and torture are prohibited under international law since they are considered *jus cogens* norms—human rights that have an inviolable character—and punished by Venezuelan domestic laws. However, these legal instruments have not stopped these violations from happening in the country. Between 2014 and 2020, 15,501 cases of arbitrary detention, 653 cases of torture, with credible reports suggesting even thousands of cases, and, between 2018 and 2019, 724 instances of enforced disappearance were documented by the OAS.⁸² Torture techniques include, but are not limited to, "stress [or submission] positions, asphyxiation, beatings, electric shocks, cuts and mutilations; death threats; and psychological torture."⁸³ In addition, excessive use of indiscriminate and disproportionate force against peaceful protesters between 2014 and 2020 has also been documented and many media recordings available to the public confirm them.⁸⁴

Not only these human rights violations happen in Venezuela, but they are also not punished according to the laws when they occur. Consequently, another big problem and violation that derives from these is the absence of effective judicial guarantees in the country. According to the Venezuelan Constitution, "the State is obliged to investigate and legally punish offenses against human rights committed by its authorities. Actions to

⁸¹ Universal Declaration of Human Rights, article 5, 1948.

Constitución de la República Bolivariana de Venezuela, article 46, 1999.

⁸² Organization of American States, "Fostering Impunity: The Impact of the Failure of the Prosecutor of the International Criminal Court to Open an Investigation Into the Possible Commission of Crimes Against Humanity in Venezuela," Washington, 2020.

⁸³ United Nations Human Rights Office of the High Commissioner, "Venezuela: UN report urges accountability for crimes against humanity," 2020.

⁸⁴ Human Rights Watch, "Venezuela: Violence Against Protesters, Journalists," 2014.

punish crimes against humanity offenses, serious violations of human rights and war crimes shall not be subject to statute of limitations. Human rights violations and the offense of crimes against humanity shall be investigated and adjudicated by the courts of ordinary competence..."⁸⁵ International documents, such as article 14 of the ICCPR and article 8 from the UDHR, also ensure the right to a fair trial and due process.⁸⁶ Nevertheless, once more, this is not the reality in practice and several due process violation cases are, for example, analyzed in the investigations of the Venezuelan case conducted by the Human Rights Council.⁸⁷ The OAS report also states that detainees are regularly "subjected to serious due process violations, including arrest without a warrant, refusal to inform them of the reason for their arrest, detention without being promptly brought before a court, denial of access to counsel, incommunicado detention, denial of the opportunity to call witnesses in one's defense, denial of the presumption of innocence, and planted evidence."⁸⁸ In addition, the authorities often discourage victims from filing formal complaints to ensure impunity for crimes committed by government functionaries.⁸⁹ Human Rights Watch also exposes that between 2017 and 2020 even the ostensibly co-opted Attorney General's Office "reported initiating 4,890 investigations into killings in the context of security operations, of which 13 had resulted in trials and one in a homicide conviction by March."⁹⁰ It also reported that "517 state agents [were]

⁸⁵ Constitución de la República Bolivariana de Venezuela, article 29, 1999.

⁸⁶ *International Covenant on Civil and Political Rights*, article 14, 1966.

Universal Declaration of Human Rights, article 8, 1948.

An international document that seeks to combat impunity is, for example, the *Rome Statute of the International Criminal Court* (1998).

⁸⁷ Human Rights Council, 2020, pp. 298-301.

⁸⁸ Organization of American States, "Fostering Impunity: The Impact of the Failure of the Prosecutor of the International Criminal Court to Open an Investigation Into the Possible Commission of Crimes Against Humanity in Venezuela," Washington, 2020, pp. 64.

⁸⁹ Amnesty International, *Venezuela 2019*.

⁹⁰ Human Rights Watch, "World Report 2021: Venezuela, Events of 2020," 2021.

charged and 26 convicted for torture or ill-treatment, and 44 individuals charged and 10 detained while awaiting trial for human rights abuses during protests in 2014, 2017, and 2019."⁹¹ Therefore, impunity for human rights violations is the norm in Venezuela given the lack of judicial independence and the breakdown of the rule of law. There is also evidence to suggest and believe that the justice system is misused to criminalize those perceived as opponents of the government.⁹² Moreover, the use of military jurisdiction to prosecute civilians or retired military personnel has continued and prisoners of conscience—imprisoned not because of real crimes, but because of their race, sexual orientation, religion, or political views—continue to be detained or face restrictions on their rights."⁹³ These have included journalists and political activists, even though the UDHR defends —on articles 3, 9, 18, 19, and 20—the fundamental rights that the concept of prisoners of conscience contradicts.⁹⁴ According to the 2018 Annual report of the Inter-American Commission on Human Rights (IACHR), one of the factors that had caused venezuelan emigration was also political persecution from the government.⁹⁵ This fact indicates the frequency in which citizens have been persecuted for their political opinions, up to the point of leading them to migrate from their home country.

Venezuela has suffered from a concerning level of censorship since Hugo Chavez's assumed the presidency, which has gradually worsened with time and particularly during the Maduro administration. Several media outlets critical of the government were the targets of censorship during Chavez's presidential term, such as the

⁹¹ Human Rights Watch, "World Report 2021: Venezuela, Events of 2020," 2021.

⁹² Amnesty International, *Venezuela 2019*.

⁹³ Amnesty International, *Venezuela 2019*.

⁹⁴ Universal Declaration of Human Rights, articles 3, 9, 18, 19, 20, 1948.

⁹⁵ Inter-American Commission on Human Rights, "Chapter IV.B Venezuela," Annual Report 2018, 2018, pp. 449.

case of the television network RCTV (Radio Caracas Televisión). This network had been on-air since its inauguration by William H. Phelps on November 15th, 1953 and was arguably the most popular TV station in Venezuela—and also the one whose signal reached more homes in the country.⁹⁶ RCTV had been critical of Chavez's government and had been accused by Chavez of being complicit in an attempted coup in 2002. In 2007, the ex-president decided not to renew its broadcasting license without previous reasoning to this decision.⁹⁷ The government published *El Libro Blanco sobre RCTV* attempting to give an explanation to its decision. While this book is filled with accusations, "it does not cite a single final judicial or administrative ruling establishing that the channel had in fact committed any of these alleged offenses during its 20-year contract."⁹⁸ There were after all no judicial or administrative decisions to that effect, despite Chavez's grip on the judiciary and the rest of government. National and international organizations set their sights on this case, considering the closure as an outrage and a violation of freedom of expression.⁹⁹ Venezuelans also expressed their support through marches and protests.¹⁰⁰ Many other censorship cases have occurred since then, during the 2014 protests the state of Táchira was left without access to the internet for 36 hours after 16 days of protests and the media platform Twitter reported image blocking in the country.¹⁰¹ Another event was the closure of "CNN en Español" in 2017 after the news network presented a special titled "Pasaportes en la sombra." This

⁹⁶ RCTV, www.rctv.net

⁹⁷ Human Rights Watch, Venezuela: TV Shutdown Harms Free Expression, 2007.

⁹⁸ Human Rights Watch, Venezuela: TV Shutdown Harms Free Expression, 2007.

⁹⁹ Organization of American States, "Office of the Special Rapporteur for Freedom of Expression expresses concern over the situation of Radio Caracas Television (RCTV) in Venezuela," Press Release 161/06, 2006.

¹⁰⁰ Romero, Simón, "Venezuela Police Repel Protests Over TV Network's Closing," *The New York Times*, 2007.

¹⁰¹ Díaz, Marianne, "Venezuela: Internet se apaga en Táchira," Global Voices 2014. USA Today, "Twitter reports image blocking in Venezuela," 2014.

special denounced a series of irregularities allegedly committed at the Venezuelan embassy in Baghdad, Iraq.¹⁰² These are only a few of the examples—amongst many—that could be made in order to conclude that the Venezuelan government has been censoring and stripping its citizens from their right to freedom of expression, other examples include cases involving radio stations, other TV networks, and online platforms.¹⁰³

Another important area to discuss in terms of human rights violations, is the rights of Indigenous Peoples in Venezuela. Given the humanitarian crisis, the rights of indigenous have also been violated and the structural problems that have affected them for years have worsened. The rights of Indigenous Peoples are not respected—much less guaranteed. The presence of military personnel, organized criminal gangs, and armed groups in indigenous territories cause violence and insecurity. In February 2016, Maduro created in the "Arco Minero" (Orinoco Mining Arc) a "strategic development zone."¹⁰⁴ The Arco Minero consists of a 118.843 km² region of Venezuelan territory, specifically located on the southern part between the Orinoco River, Bolívar state and part of the Amazonas state.¹⁰⁵ According to reports, illegal mining operations carried out without official permission and labor or environmental regulations have been the reality of this project and indigenous groups have suffered the consequences.¹⁰⁶

¹⁰² Linares, Albinson, "El bloqueo de CNN en Español: otro episodio en el conflicto entre los medios y el gobierno de Venezuela," *The New York Times*, 2017.

¹⁰³ Committee to Protect Journalists, "Mapping Venezuela's shrinking radio landscape" https://cpj.org/2020/09/venezuela_radio_shutdowns_censor_broadcast/

¹⁰⁴ NPR, "Venezuela Trudges Ahead With Risky 'Gold Rush' Despite Sanctions," 2018.

¹⁰⁵ El Tiempo, "Historia del Arco Minero del Orinoco y su turbia relación con Maduro," 2019.

¹⁰⁶ Amnesty International, *Venezuela 2019*.

Inter-American Commission on Human Rights, "Chapter IV.B Venezuela," Annual Report 2018, 2018, pp. 492, 493, 494.

In an interview, Antonio de Lisio, geographer and professor at the Central University of Venezuela, said that "the Arco Minero is misnamed because there are not only—or even mainly—minerals there. Eighty percent of the surface in the area is forest, trees, thus offering a great resource for air purification. Venezuela's largest rivers are also in this region. The incorrectly labeled Arco Minero is a vital space for the survival of indigenous groups, who are struggling mightily to have their territorial rights recognized."¹⁰⁷ Furthermore, the Center for Strategic and International Studies stated that Maduro's regime benefits from illicit mining since it involves "state-owned enterprises, such as Minerven and Compañía Anónima Militar para las Industrias Mineras, Petrolíferas y de Gas (CAMIMPEG), which source minerals from illicit mines and export them officially to other countries, most notably Turkey and the United Arab Emirates."¹⁰⁸ In addition to this illegal mining issue, "*Pranes* (prison gang leaders), *megabandas* (large criminal gang organizations with over 50 members), *sindicatos* (gangs originally connected to powerful labor unions), *colectivos* (paramilitary groups), the National Liberation Army (ELN), and dissidents of the Revolutionary Armed Forces of Colombia (FARC)" are present in the region together with military presence from the government and affect the safety of the Indigenous groups in the area.¹⁰⁹ Experts also believe these activities are directly linked to the poverty rates in the exploited region.¹¹⁰

¹⁰⁷ El Tiempo, "Historia del Arco Minero del Orinoco y su turbia relación con Maduro," 2019.

¹⁰⁸ Center for Strategic and International Studies, "Illegal Mining in Venezuela: Death and Devastation in the Amazonas and Orinoco Regions," 2020.

¹⁰⁹ Center for Strategic and International Studies, "Illegal Mining in Venezuela: Death and Devastation in the Amazonas and Orinoco Regions," 2020.

¹¹⁰ Amnesty International, *Venezuela 2019*.

These massive violations of political, civil, economic, and social rights have been also reflected in shortages and lack of access to food and medicines, and the deterioration in health services and the exodus of the health personnel, which had led to undernourishment of the population, child malnutrition, and restricted access to drinking water and sanitation. In addition, hyperinflation has also contributed to the aforementioned problems in the country. Venezuela's hyperinflation started in November 2016 and it has climbed to 3012% in March of 2021.¹¹¹ Currently, the established minimum wage is \$2.40 per month at the official exchange rate, however, much of the country subsists through the black market's US dollar's exchange rate and not through the official government's rate.¹¹² There is a clear variation and difference between Venezuela's current minimum wage and its neighboring South-American countries. For example, data shows that Colombia's minimum wage is \$261, Ecuador's is \$400, and Brazil's—being the lowest before Venezuela—is \$207, almost a hundred times higher.¹¹³ Through this comparison it is easier to visualize how exorbitantly low Venezuelan's minimum wage really is. Hyperinflation, together with economic and social policies, reduced food production and weakened distribution systems. The UN Food and Agriculture Organization reported that 9,1 million Venezuelans were undernourished on a 3-year average from 2017-2019.¹¹⁴ According to Amnesty International, "food distribution systems, such as the Local Supply and Production Committees (CLAPs),

¹¹¹ Hanke, Steve, "Venezuela's Great Bolivar Scam, Nothing But A Face Lift," Forbes Magazine, 2018. Trading Economic, "Venezuela Inflation Rate."

¹¹² Reuters, "Venezuela Raises Minimum Wage in Fourth Year of Hyperinflation," U.S. News and World Report, 2021.

¹¹³ Statista, "Minimum Monthly Wage in Selected Latin American Countries in 2021 (in U.S. Dollars)." Statista, Statista Inc., 14 Jan 2021.

<https://www.statista.com/statistics/953880/latin-america-minimum-monthly-wages/>

¹¹⁴ Food and Agriculture Organization of the United Nations, "Venezuela (Bolivarian Republic of)," <http://www.fao.org/faostat/en/#country/236>

continued to fail to meet nutritional needs and operated according to politically discriminatory criteria."¹¹⁵ Moreover, The United Nations Children's Fund (UNICEF) warned in 2018 that a "growing number of children" are experiencing malnutrition given the circumstances in the country and called for more action from the government given the "worrisome decline in children's nutritional wellbeing."¹¹⁶

As it is mentioned in another Human Rights Watch report, "it is impossible to know yet the full extent of the health and food crises in Venezuela" because "Venezuelan authorities have failed to publish health and nutrition data."¹¹⁷ Serious shortages in basic health services and medicines, as well as the exodus of health personnel, has affected people's ability to access health care. The maternal mortality ratio (number of maternal deaths per 100,000 live births) was 125.0 in 2017, being very likely that it has increased given the worsening circumstances since that year.¹¹⁸ Furthermore, the mortality rate for children under 5-years old is 24.2 deaths per 1,000 live births.¹¹⁹ The Centers for Disease Control and Prevention (CDC) reports a breakdown of the medical infrastructure in Venezuela and published data that informs of over 1,000 confirmed cases of measles and over 400,000 reported cases of malaria in 2017, and over 1,600 suspected cases of diphtheria from 2017 to 2019.¹²⁰ Hospitals lack supplies, medicines, and even running water and electricity, making it very difficult, if not downright impossible, for the person-

¹¹⁵ Amnesty International, *Venezuela 2020*.

¹¹⁶ UNICEF, "In Venezuela, prevalence of malnutrition among children grows as economic crisis deepens," 2018.

¹¹⁷ Human Rights Watch, "Venezuela's Humanitarian Emergency, Large-Scale UN Response Needed to Address Health and Food Crises," 2019.

¹¹⁸ UNICEF, UNICEF Data Warehouse.

¹¹⁹ UNICEF, UNICEF Data: Monitoring the situation of children and women, Venezuela (Bolivarian Republic of).

¹²⁰ Centers for Disease Control and Prevention, "Health Infrastructure Breakdown in Venezuela," 2018.

nel to do their job successfully.¹²¹ 75% of public health care centers do not receive water continuously, or at all.¹²² Access to all types of contraception is extremely limited and, in some cases, non-existent.¹²³ According to an article published in *El País*, Venezuelans turn to "santería," a pantheistic Afro-Cuban folk religion developed from the beliefs and customs of the Yoruba people and incorporating some elements of the Catholic religion, to treat their illnesses.¹²⁴ In combination with the limited access to food and proper healthcare services, which have led to a great amount of deaths, there also exists a restricted access to drinking water and sanitation that continues to affect a significant part of the population. A *New York Times* research found that a third of collected water samples did not even meet national norms.¹²⁵ Data from 2018 suggests that 82% of the population, equivalent to 28,621,000 people, do not receive water in a continuous way and the one received is of doubtful quality or not drinkable.¹²⁶

Consequently, malnourishment, child malnutrition, the emergence of previously eradicated diseases, an increase in deaths from preventable diseases, and an increase in maternal and infant mortality rates, are part of the evidence of the increased poverty rates in the country.¹²⁷ The 2018 National Survey of Living Conditions (ENCOVI, for *Encuesta Nacional de Condiciones de Vida*) found that 75% of the country's population is

¹²¹ NPR, "Many Venezuelan Hospitals Lack Basics To Function, Let Alone Handle COVID-19," 2020.

¹²² CEPAZ, *Emergencia Humanitaria Compleja en Venezuela: Derecho al Agua*, 2018, pp. 1.

¹²³ *The New York Times*, "Venezuelan Women Lose Access to Contraception, and Control of Their Lives," 2021.

¹²⁴ *El País*, "Los venezolanos recurren a la santería para tratar sus enfermedades," 2021.

Lexico, "Santería," Oxford University.

¹²⁵ Global Health Now, "Drowning in Dirty Water," Johns Hopkins Bloomberg School of Public Health, 2019.

¹²⁶ CEPAZ, *Emergencia Humanitaria Compleja en Venezuela: Derecho al Agua*, 2018, pp. 1.

¹²⁷ Amnesty International, *Venezuela 2019*.

in poverty, according to their income.¹²⁸ In the following 2019-2020 report, this number increased to 96% of the population.¹²⁹

Despite the entire crisis described above, the government continued to refuse to recognize the gravity of the situation and, most of the time, accept assistance from humanitarian organizations. These factors are the main reason for the most recent emigration wave or exodus of Venezuelans in the past few years; the citizens started to migrate to other countries looking for alternatives and a better quality of life. In the First Chapter, specifically on the "Migrants" section, different coexistent elements in the context of mobility in a humanitarian crisis were explained. These were: causality, geography, temporality, and vulnerability. The causality of this migratory wave encompasses, not only the present conditions, but also the rapid decline and deterioration rate of the country during the past years. Thus, first leading to what could be identified as "voluntary migration" and now changing to a necessary one. For the purposes of this thesis, the geographic dimension has a great amount of relevance since Venezuela and Colombia share a physical border, therefore, geographical proximity could act as a negative component since the same challenges could repeat in the new destination, in this case Colombia. In the Venezuelan situation description, it is possible to easily identify the relevant phases, the pre-crisis and the crisis itself—where the humanitarian crisis cannot be prevented anymore and migration becomes practically a necessity instead of a possibility based on a personal choice. Finally, the vulnerability dimension is clear since the population is exposed to all the aforementioned elements of the crisis on a daily basis.

¹²⁸ "Encuesta Nacional de Condiciones de Vida," Andrés Bello Catholic University in Caracas, 2018.

¹²⁹ Share America, "Under Maduro, nearly all Venezuelans live in poverty," 2020.

The International Response

These circumstances in Venezuela have caught the attention of the international community for several years.¹³⁰ Many different reports and studies have been mentioned through this thesis as evidence of the previous statement. Moreover, several countries have imposed sanctions on the Venezuelan government and NGOs have continuously reported the crimes against humanity perpetrated by the Venezuelan government, as well as the deplorable living conditions in the country. A series of protests took place in 2017, after the general international community did not recognize Maduro's government as legitimate and Maduro imposed himself in power despite the international pressure and national discontent, and other related events.¹³¹ In the midst of these events, the United States sent aid, food and medical supplies, to the country through the Venezuelan-Colombian border—specifically through the city of Cúcuta.¹³² Since Maduro had actively denied the humanitarian crisis in the country, the government blocked the route and did not let the aid into the country's side of the border.¹³³ Later, clashes between the Venezuelan military and those trying to clear the pathway started and the aid was "accidentally" burned during these events.¹³⁴

In that same year, the former United States' president Donald Trump threatened Maduro's government with the possibility of a military intervention. "We're all over the

¹³⁰ Sonneland, Holy K., "Update: How Is the International Community Responding to Venezuela?" AS/COA, 2017.

¹³¹ Observatorio Venezolano de Conflictividad Social, "Venezuela: 6.729 protestas y 163 fallecidos desde el 1 de abril de 2017," 2017.

¹³² The Guardian, "Venezuela: first US aid trucks arrive at border blockaded by Maduro," 2019.

¹³³ CNN, "Tensions rise as Venezuela blocks border bridge in standoff over aid," 2019.

¹³⁴ The Conversation, "Venezuela: indigenous people are forgotten victims of crisis," 2019.

world and we have troops all over the world in places that are very very far away, Venezuela is not very far away and the people are suffering and dying. We have many options for Venezuela including a possible military option if necessary,” said Trump.¹³⁵ However, these threats did not materialize. Furthermore, the United Nations' Security Council discussed Venezuela's political situation regarding elections and failed to get to an agreement, since Russia vetoed the United State's draft resolution and the Russian draft resolution failed to have the necessary amount of votes in favor to pass.¹³⁶

As it was discussed in the first chapter in the section titled "Freedom of Association and Border Control," Heath Wellman believes in "exporting justice" as a possible solution. Aid has been sent to Venezuela on multiple occasions, rarely being accepted. On occasion, the aid that has been sent, has been burned, or otherwise destroyed; conversations and mediation have been offered and have taken place through and/or with the intervention of intermediaries, the United States almost militarily intervened in the country and studies suggest that this would have not necessarily be the best option.¹³⁷ Consequently, after exposing the Venezuelan case it could be possible to conclude that his premise does not have the necessary strength to hold itself as true.

Finally, article 23 of the Venezuelan Constitution states that "the treaties, pacts and conventions relating human rights which have been executed and ratified by Venezuela have a constitutional rank, and prevail over internal legislation, insofar as they contain provisions concerning the enjoyment and exercise of such rights that are more fa-

¹³⁵ The Guardian, "Trump threatens 'military option' in Venezuela as crisis escalates," 2017.

¹³⁶ UN News, "Venezuela: Competing US, Russia resolutions fail to pass in Security Council," 2019.

¹³⁷ The Conversation, "Venezuela: indigenous people are forgotten victims of crisis," 2019.

vorable than those established by this Constitution and the laws of the Republic, and shall be immediately and directly applied by the courts and other organs of the Public Power."

This article allows us to clearly see the relationship between Venezuela and its lack of adherence towards international law, since neither national laws nor international ratified agreements are properly applied and/or enforced in Venezuela.

CHAPTER THREE: **THE COVID-19 PANDEMIC**

Inmigration and COVID-19 in Colombia

The latest "migration of despair" wave of Venezuelan emigration has occurred during Maduro's presidential term. Given the geographical proximity and other related elements, Colombia has been one of the main destinations for Venezuelans. One of the supporters of this theory is Professor Iván de la Vega, director of the International Migration Laboratory located in Simón Bolívar University in Caracas, who considers that Colombia is the main destination for Venezuelans, not only in Latin America but in the entire world.¹³⁸ In support of this argument, the R4V Platform reports that Colombia is the country with more venezuelan migrants with a total number of 759,584 individuals recorded on January 31st, 2021.¹³⁹

According to a *New York Times* article, "Latin America accounted for 35 percent of all coronavirus deaths in the world" during the week of April 19th, 2021.¹⁴⁰ Since the COVID-19 pandemic started in March 2020, it is not possible to deny how the whole world, but more specifically, Latin American countries have been affected socially, economically, and politically thanks to pre-existent crises. Furthermore, the pandemic has "highlighted a denial of migrants' rights" and has raised concerns about human rights in the region. The Colombian government has tried to include the Venezuelan population of immigrants into their pandemic response plan. However, after the decree of a mandatory

¹³⁸ Subero, Carlos, "Así ha cambiado la emigración del venezolano desde 2013," USB Noticias, 2017.

¹³⁹ R4V Coordination Platform for Refugees and Migrants from Venezuela, 2021.

¹⁴⁰ *The New York Times*, "After a Year of Loss, South America Suffers Worst Death Tolls Yet," 2021.

quarantine, given the economic consequences of the lockdown, most Venezuelan migrants are struggling to survive in Colombia.¹⁴¹ With no more than a few public policies designed to support their re-integration, the venezuelan migrants encounter difficulties entering the formal labour market. The prospect of homelessness, destitution, violence and recruitment into criminal gangs is real.¹⁴² A Venezuelan migrant stated in an interview that they "won't have any way to earn an income because of the virus, otherwise [they] would not return to [their] country."¹⁴³ Access to health services is not guaranteed for this group of migrants despite its recognition as a human right in the UDHR. Colombia only grants full access to healthcare to documented migrants, excluding those irregular or undocumented. According to the article "Protecting Migrants or Reversing Migration? COVID-19 and the risks of a protracted crisis in Latin America," the irregular or undocumented migrants in the country represent 57 per cent of the migrant population.¹⁴⁴ Moreover, their vulnerabilities are made even worse by stigmatization, xenophobia, and discrimination. Many NGOs, UN officials, and experts have pointed out the xenophobia against Venezuelans in Latin American countries due to the recent massive wave of migration.¹⁴⁵ The UNHCR campaign "Somos Panas Colombia" was launched with the intention of combating this problem. This campaign focuses on showing "that Venezuelans are PEOPLE who HAD to leave their country and,

¹⁴¹ Riggiozzi, Pia; Grugel, Jean; Cintra, Natalia; *Situational Brief: Perspective on Migrants' Right to Health in Latin America during COVID-19*, "Protecting Migrants or Reversing Migration? COVID-19 and the risks of a protracted crisis in Latin America," 2020.

¹⁴² Riggiozzi, Grugel, Cintra, 2020.

¹⁴³ Norwegian Refugee Council, "Covid-19 forces migrants and refugees back to crisis-ridden Venezuela," 2020.

¹⁴⁴ Riggiozzi, Grugel, Cintra, 2020.

¹⁴⁵ The New Humanitarian, "Venezuelan migrants face rising xenophobia in Latin America," 2020.

who are THANKFUL for being accepted in Colombia."¹⁴⁶ Furthermore, a study made by a global development firm named Sayara International, showed that fifty-five of the

¹⁴⁶ UNHCR, "Somos Panas Colombia Campaign - Fact Sheet," 2019.

migrants interviewed in Colombia, which constitutes 32% of the research sample of the study, claimed that "their human rights had been violated in some way; examples include episodes of verbal abuse, physical aggression, threat, arbitrary displacement, sexual harassment, and forced labor, amongst others."¹⁴⁷ Due to the pandemic, Colombia and Venezuela closed their shared border in March and refugees stayed largely trapped, not being able to leave Colombia and return to their home country.¹⁴⁸ However, even with the shutdown of transportation due to quarantine policies, Venezuelans managed to get from different parts of Colombia to the border crossing points of Norte de Santander and Arauca, the only ones that were enabled.

The exponential growth of applications for refugee status in various Latin American countries by the Venezuelan population, shows that the region was not prepared for this mass exodus.¹⁴⁹ In Colombia, the Special Permit of Permanence (PEP) and a Border Mobility Card (TMF) were implemented as a way to legalize the immigration into the country. The PEP is directed to those Venezuelan citizens who entered the national Colombian territory before August 31, 2020 and in this way the individual will not have a judicial record in Colombia, nor deportation or expulsion measures could be implemented.¹⁵⁰ Moreover, the TMF card is a document issued by the Colombian government as a permit for Venezuelans to move freely through Colombian territory in the border area. However, even measures as important as the PEP, are tempo-

¹⁴⁷ Restrepo Pineda, Jair Eduardo; Jaramillo Jaramillo, Juliana, "Venezuelans in Colombia: understanding the implications of the migrants' crisis in Maicao (La Guajira)," Sayara International, 2018.

¹⁴⁸ Agencia EFE, *Volver a Venezuela desde Colombia, una odisea forzada por el coronavirus*, Colombia, 2020.

¹⁴⁹ Prieto Rosas and Lozano-Ascencio, 2020.

¹⁵⁰ Migración Ministro de Relaciones Exteriores, "Migración Colombia lanza nuevo permiso especial de permanencia para venezolanos," 2020.

rary and exceptional, and do not constitute a full legal certainty.¹⁵¹ Moreover, it is also important to consider that, despite the national and international efforts, the vast majority of the migrants are considered irregular or undocumented migrants and do not enjoy general protections from the Colombian government.

Evidently, the Colombian migratory system was not ready to manage a massive flow of this magnitude.¹⁵² During 2018, the Venezuelan migrants situation in Colombia worsened in such a way that the mayor of Cúcuta, César Rojas, asked the Colombian president, Juan Manuel Santos, to declare a social emergency due to the large number of Venezuelans who entered the area and were sleeping in parks, streets, and other public spaces.¹⁵³ Santos accepted the proposal by Rojas and other public officials who were overwhelmed by the massive migratory flows from Venezuela and announced that they would stop issuing more Border Mobility Cards (TMF), used by citizens of neighboring regions to cross the national border. In addition, he announced the creation of the Special Migration Group (GEM) to reinforce control and security at the border, as well as the construction of a Migrant Assistance Center with the support of the UN, which initially would have capacity for 2,000 people.¹⁵⁴ The Migrant Assistance Center was inaugurated on March 8th, 2019 in the border city of Maicao, in La Guajira region.¹⁵⁵

¹⁵¹ Cabrera, D., Cano, G. and Castro, A., *Procesos recientes de movilidad humana entre Venezuela y Colombia 2016-2018*, "Crisis y migración de población venezolana. Entre la desprotección y seguridad jurídica en Latinoamérica," Ciudad de México: UNAM, 2019, pp. 59-94.

¹⁵² Prieto Rosas and Lozano-Ascencio, 2020.

¹⁵³ El Tiempo, "Cúcuta, cerca de emergencia social por venezolanos durmiendo en calles," 2018.

¹⁵⁴ El Tiempo, "Estas son las medidas para afrontar la crisis migratoria," 2018.

¹⁵⁵ UNHCR, "UNHCR opens reception centre near Colombian border to assist vulnerable Venezuelans," 2019.

State of Emergency: Venezuela and COVID-19

The UDHR establishes in article 3 the right to life, which is considered a *jus cogens* norm—a peremptory norm in which no derogation is permitted.¹⁵⁶ The principle of *jus cogens* is written in the *Vienna Convention of the Law of Treaties* (VCLT) and it specifically states that "a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law."¹⁵⁷ This clause demonstrates the importance of the compliance and the international acceptance of the *jus cogens* norms, even in cases where temporary derogation is permitted, such as public emergencies or armed conflicts. In these cases, two conditions must be met: (1) "the situation must amount to a public emergency which threatens the life of the nation," and (2) "the State party must have officially proclaimed a state of emergency."¹⁵⁸ The rights that are considered as non-derogable rights under International Humanitarian law under article 4 of the ICCPR are: article 6 ("every human being has the inherent right to life..."), article 7 ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment..."), article 8 ("no one shall be held in slavery...no one shall be held in servitude"), article 11 ("no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation"), article 15 ("no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed..."), article 16 ("everyone shall have the right to recognition everywhere as a person before the law"),

¹⁵⁶ *The Universal Declaration of Human Rights*, article 3, 1948.

¹⁵⁷ *Vienna Convention of the Law of Treaties*, Art. 53, 1969.

¹⁵⁸ *International Covenant on Civil and Political Rights*, General comment no. 29 states of emergency (article 4), CCPR/C/21/Rev.1/Add.11, 2001.

article 18 ("everyone shall have the right to freedom of thought, conscience and religion...").

The Human Rights Council report "Detailed findings of the independent international fact finding mission on the Bolivarian Republic of Venezuela," describes all the "state of emergency and exceptions" in Venezuela from 2016 until 2020.¹⁵⁹ In total, 26 of these have been declared by the country during this period. Recently, in March 2020, Venezuela declared a state of emergency like many other countries in the world due to the COVID-19 pandemic.¹⁶⁰ This was extended twice, once in May 2020 and another one in June 2020. Moreover, another two extensions were declared and Venezuela was in a state of emergency until August 2020.¹⁶¹ According to article 338 of the Venezuelan Constitution, "a state of alarm may be declared when catastrophes, public calamities or other similar events occur, seriously endangering the security of the Nation or its citizens." This statement aligns completely with the global situation, which encompasses a pandemic. However, the same article proceeds to state that "such state of exception shall last for up to 30 days, and may be extended for an additional 30 days."¹⁶² Consequently, it is possible now to visualize how the second, third and fourth extensions of the state of emergency contradict the provisions stated in the country's constitution. Moreover, the decree was not submitted to the National Assembly, contradicting the rest of article 338, where it is stated that "the National Assembly has the responsibility of the

¹⁵⁹ Human Rights Council, "Detailed findings of the independent international fact finding mission on the Bolivarian Republic of Venezuela," 2020, pp. 35-37.

¹⁶⁰ Human Rights Council, "Detailed findings of the independent international fact finding mission on the Bolivarian Republic of Venezuela," 2020, pp. 37.

¹⁶¹ McKenzie, Baker, "Venezuela: It is decreed a new State of Alarm throughout the country due to COVID-19 until October 6, 2020," 2020.

¹⁶² Constitución de la República Bolivariana de Venezuela, article 338, 1999.

approval for the extension of the states of exemption."¹⁶³ In addition, the Venezuelan government declared a new state of emergency in September 2020.¹⁶⁴ These states of alarm have included transit restrictions, suspension of labor and school activities, suspension of public events and places of public recreation, commercial flights suspensions, mandatory use of respiratory masks, quarantine guidelines, suspension of administrative procedures, and others.¹⁶⁵

On the other hand, Colombia has also declared a health state of emergency due to the pandemic and it was extended until February 2021.¹⁶⁶ Nevertheless, it is important to consider the differences between the declared states of emergency in each country; in Venezuela—a country where human rights were not guaranteed or protected even after it, opposed to Colombia—a country where most human rights protections are left and guaranteed. The health system is not prepared to handle the spread of common diseases, let alone the virus' effects and its highly contagious component. COVID-19 consequences combined with the deterioration of health services, limited access to food and potable water, high poverty rates, inadequate housing structures, lead to conclude that the situation itself is not given or ideal for a community quarantine in the country in the first place.

Those Venezuelan citizens who have succeeded in migrating back to their country of origin (and who wanted to return as a result of the pandemic in Colombia) have faced

¹⁶³ Constitución de la República Bolivariana de Venezuela, article 338, 1999.

¹⁶⁴ McKenzie, Baker, "Venezuela: It is decreed a new State of Alarm throughout the country due to COVID-19 until October 6, 2020," 2020.

¹⁶⁵ McKenzie, Baker, 2020.

¹⁶⁶ U.S News & World Report, "Colombia Extends Health State of Emergency Until End of February," 2020.

"indiscriminate and disproportional measures of internment," which violate their right to personal liberty and "clearly go beyond preventive home quarantine."¹⁶⁷ Additionally, protests and public demonstrations have ceased given the mandatory quarantine, therefore, it could also be interpreted as a violation of the right to freedom of expression taking into account the previous history of censorship and repression in the country. "The curtailment of rights related to civic protest and public opinion is very much within the Executive's interest," say two senior research fellows at Max Planck Institute for Comparative Public Law and International Law in Heidelberg.¹⁶⁸ Moreover, the continuous suspension of certain guarantees, considering the 26 decreed states of emergency in the span of four years, takes away the importance of the rights in question since they have been non-existent and/or inconsistent for a long period of time because of the amount of extensions and newly decreed states of emergency. In Venezuela, the absence of the characteristic legality that should prevail during the decree of a state of emergency is one of the main reasons why these measures "have been conducive to a greater legal insecurity, arbitrariness in governmental action, and human rights violations."¹⁶⁹

The Venezuelan crisis has worsened during the COVID-19 pandemic. The government published numbers of cases and deaths due to the virus are hard to believe due to the previous history of censorship and lack of transparency in the country. Taking this into consideration, the government has also "threatened, harassed, and arrested jour-

¹⁶⁷ Casal Hernández, Jesús María; Morales Antoniazzi, Mariela, "States of Emergency without Rule of Law: The Case of Venezuela," *Verfassungsblog*, 2020.

¹⁶⁸ Casal Hernández, Jesús María; Morales Antoniazzi, Mariela, 2020.

¹⁶⁹ Casal Hernández, Jesús María; Morales Antoniazzi, Mariela, 2020.

nalists, opposition politicians, and health-care workers for speaking out regarding COVID-19 and the response to the pandemic."¹⁷⁰ According to the US Department of State "2020 Country Reports on Human Rights Practices: Venezuela," the NGO Espacio Público documented 59 arrests from March to September 2020 due to COVID-19 coverage, and the NGO United Doctors for Venezuela documented the arrest of 12 health-care professionals who were demanding personal protective equipment at the San Cristobal Central Hospital.¹⁷¹ As previously mentioned, the health system in Venezuela was not ready for this pandemic—and it continues to be woefully incapable to deal with it. In addition, health professionals do not only have to work during a global pandemic in a country where there are not even the necessary resources in the first place, but they also have to suffer harassment and fear of denouncing the situation they find themselves in. Finally, regardless of exceptions for journalists and press members to travel during the official quarantine, Maduro's government has violated the right to freedom of movement of the aforementioned group of individuals.¹⁷²

Maduro's regime has increased food prices, basic services, fuel and taxes, arguing that they are equal to those used in other countries. Nevertheless, since around May 2020 the minimum wage of a worker Venezuelan has hovered around 400,000 Bolívares monthly, equivalent, as noted earlier, to roughly \$2.¹⁷³ This fact highlights that the comparison made by the president is perversely out of place in the Venezuelan context. Furthermore, despite the state of alarm and mandatory quarantine in the country, mining

¹⁷⁰ US Department of State, "2020 Country Reports on Human Rights Practices: Venezuela," 2020.

¹⁷¹ US Department of State, 2020.

¹⁷² US Department of State, 2020.

¹⁷³ Observatorio Venezolano de Conflictividad Social OVCS, "Venezuela Mayo 2020," 2020.

activities have not ceased and are performed without the adequate sanitary protocols to prevent the spread of the virus.¹⁷⁴ Consequently, the state of Bolivar has had one of the highest numbers of confirmed cases, including the transmission of the virus in indigenous communities.¹⁷⁵ This shows the lack of thought about indigenous groups and their vulnerability to the pandemic, even more since they are isolated from the cities where the medical attention centers are usually located.

¹⁷⁴ International Commission of Jurists Advocated for Justice and Human Rights, "Venezuela: indigenous peoples face deteriorating human rights situation due to mining, violence and COVID-19 pandemic," 2020.

¹⁷⁵ International Commission of Jurists Advocated for Justice and Human Rights, "Venezuela: indigenous peoples face deteriorating human rights situation due to mining, violence and COVID-19 pandemic," 2020.

CHAPTER FOUR:
PREVENTION THROUGH DETERRENCE AND HUMAN RIGHTS

Prevention Through Deterrence Techniques

The Venezuelan government has been implementing questionable measures that could be compared to those outlined and applied in the "Border Patrol Strategic Plan 1994 and Beyond," published in the United States in the mentioned year.¹⁷⁶ The "Border Patrol Strategic Plan 1994 and Beyond" was a document that introduced the term and "strategy" of "prevention through deterrence." This document's goal was to introduce a new set of policies that would deter illegal crossings of its southern border with Mexico, and that was expected to "improve control of the border."¹⁷⁷ The geographic environment in the United States southern border varies from lakes, rivers, and valleys to mountains and deserts and temperatures also vary between the geographical points. Thus, one of the main measures of the published Strategic Plan was to disrupt the traditional entry points and smuggling routes—also called "avenues of approach"—and force the individuals to cross over a more hostile terrain. This hostile terrain is not suited for crossings and it is more suited for enforcement.¹⁷⁸ For example, the Sonoran Desert has acted as the "hostile terrain" given its high temperatures and harsh conditions, maximizing the possibility of apprehension, or, sadly, death. By raising the risk of being apprehended or dying, it is believed that illegal aliens would consider it "futile" to try to enter the United States illegally and, therefore, the illegal crossings would decrease.

¹⁷⁶ U.S. Border Patrol, "Border Patrol Strategic Plan 1994 and Beyond," July, 1994.

¹⁷⁷ U.S. Border Patrol, 1994.

¹⁷⁸ U.S. Border Patrol, 1994.

According to the Strategic Plan, the areas with the highest illegal entry flow were Southern California, West Texas and New Mexico, South and South Central Texas, and Arizona and it was developed around four different phases. Phase I consists in achieving control of the border in San Diego and El Paso given their position in the previously mentioned entry flow areas ranking. The first phase emphasizes the importance of identifying areas affected by shifts in traffic patterns, since traffic will possibly shift to other avenues of approach when deterrence measures are implemented. Phase II consists in achieving control of South Texas and Tucson corridors due to the illegal flow shift explained before. Next, Phase III consists in gaining control of the remainder of the Southwest border. Finally, Phase IV consists of gaining control of all the United States borders and adjusting to the flow in new areas of activity. The following actions are some of the ones encouraged in order to achieve the desired level of border control: barriers (fencing, lighting, bollards), increase visibility to promote public awareness, improve technology to maximize personnel and enhance mobility flexibility, increase joint operations (and share equipment) with Customs, Drug Enforcement Administration, Local Law Enforcement Agencies. Some of the indicators of success or effectiveness of these phases include the following: initial increase of arrests and entry attempts, increased instances of more sophisticated methods of smuggling at checkpoints, fee increase by smugglers, fewer returnees, potential for more protests against immigration policy, more violence at attempted entries. A study published in 1997 titled "Illegal Immigration: Southwest Border Strategy Results Inconclusive; More Evaluation Needed" also considers deaths of aliens attempting entry as one of the indicators for measuring the

effectiveness of the strategy to deter illegal entry along the Southwest border.¹⁷⁹ The study did not find an increase in the overall number of illegal alien deaths but found an increase in the number of deaths from environmental exposure (falls, hypothermia, dehydration) in the remote areas where immigrants had traveled in an effort to avoid areas of greater enforcement along the border.¹⁸⁰ In the case of the Sonoran desert dehydration is common in individuals due to the extreme temperatures.

¹⁷⁹ U.S. GAO, "Illegal Immigration: Southwest Border Strategy Results Inconclusive; More Evaluation Needed," 1997, pp. 84.

¹⁸⁰ U.S. GAO, 1997, pp. 50.

Venezuelan Response to Returnees and Human Rights Implications

Given the complicated circumstances that Venezuelan migrants find themselves in Colombia—lack of job opportunities and, therefore, of income; lack of access to health services in a global pandemic; xenophobia, stigmatization, and discrimination; among others—many have tried returning to their country and were surprised by several measures taken by Maduro's government in order to deter their return. Venezuelan citizens who have been forced to return to their country due to the COVID-19 pandemic, "survive in deplorable conditions at the Puntos de Atención Social Integral (PASI)"—which translates to "Comprehensive Social Care Points."¹⁸¹ The PASI shelters are quarantine confinement centers where the returnees are sent once they return to their country; they would have to stay there for a period of 14 or 21 days depending on their state of destination.¹⁸² In addition, many returnees have been required to stay in quarantine centers for several weeks in addition to the 14 days recommended by the World Health Organization, due to delays in COVID-19 diagnostic tests and unnecessarily complex testing protocol.¹⁸³ The Venezuelan Government claimed that the installation of these 17 centers was to prevent the spread of COVID-19 in the national territory, but they have been ineffective in protecting the population and counterproductive since the conditions only make the migrants even more vulnerable. These centers have unsanitary conditions and are overcrowded.¹⁸⁴ Returnees are forced to quarantine, with little access to food, water, electricity, hygiene products, or medical

¹⁸¹ Human Rights Watch, "Venezuela: Urgent Aid Needed to Combat Covid-19," 2020.

¹⁸² United Nations, "Más de 70.000 personas han retornado a Venezuela desde abril por la crisis de COVID-19," 2020.

¹⁸³ Human Rights Watch, "Venezuela: Abusive Treatment of Returnees," 2020.

¹⁸⁴ Bloomberg, "Maduro Welcome Migrants Home By Locking Them in Sweltering Camps," 2020.

attention. Some returnees who protested such conditions were threatened with getting arrested.¹⁸⁵ The conditions in these shelters are not only inhumane, but also promote the spread of the virus between returnees due to the lack of space for social distancing and the scarce resources provided.

Another measure from the Venezuelan government involves the acceptance of only a limited amount of daily entries of Venezuelan returnees through the Colombian border.¹⁸⁶ A maximum of 300 people is allowed to cross daily through legal means. Consequently, illegal crossings through what is colloquially called "trochas" have become more and more recurrent and common. "Trochas" are the alternate routes to cross the border, where smugglers and armed groups charge the migrants from 5,000 to 150,000 Colombian pesos to cross—\$1.35 to \$40.42, an extremely high amount for Venezuelans considering their minimum wage in Venezuela and their employment situation in Colombia.¹⁸⁷ These unofficial trails involve harsh weather and environment conditions, such as the previous example on the Sonoran Desert in the United States, and smugglers or armed groups take advantage of the situation of the migrants and as a consequence they are charged with the promise of crossing back to their country.

In addition, on August 20th, 2020 the Venezuelan government restricted the entry of Venezuelan citizens through the border passages in the state of Táchira, specifically through the Puente Internacional Simón Bolívar, and the military presence increased in

¹⁸⁵ Human Rights Watch, "Venezuela: Abusive Treatment of Returnees," 2020.

¹⁸⁶ Agencia EFE, 2020.

¹⁸⁷ El Tiempo, "Incrementan control en trochas con Venezuela ante retorno de migrantes," 2020.

the area.¹⁸⁸ The reasons given by the Venezuelan authorities have to do with the high number of people who did not comply with the quarantine requirements due to COVID-19 in the state of Táchira. Due to this decision, the director of the Colombian Migration department, Juan Francisco Espinosa, also gave instructions to suspend the transit of buses with Venezuelan citizens to this crossing point.¹⁸⁹ The militarization of the border is therefore used as a strategy to impede Venezuelan citizens from returning back to their own country and to instill fear among the would-be returners, making them second-guess their initial return plans. In fact, the Global Shelter Cluster found that "through September 2020 there was a noticeable decrease in the number of spontaneous returns," allowing again for the opportunity to compare these measures with the ones exposed by means of consideration of the "Border Patrol Strategic Plan 1994 and Beyond."¹⁹⁰

Additionally, Iris Varela—a high-ranking Venezuelan government official, currently deputy and first vice president of the National Assembly (though she has held a number of other offices before)—officially proposed in the National Assembly that Venezuelans that emigrated out of the country should have their nationality revoked and their property confiscated.¹⁹¹ This proposal is completely unconstitutional since article 35 of the Venezuelan Constitution states that "Venezuelans by birth cannot be deprived of their nationality. The Venezuelan nationality by naturalization can be revoked only by a

¹⁸⁸ Tomillo, Manuel, "Gobierno de Maduro cierra paso a venezolanos por el puente Simón Bolívar este #21Ago," 2020.

¹⁸⁹ Tomillo, Manuel, "Gobierno de Maduro cierra paso a venezolanos por el puente Simón Bolívar este #21Ago," 2020.

¹⁹⁰ Global Shelter Cluster <https://www.sheltercluster.org/venezuela/factsheets/2020-09>

¹⁹¹ Infobae, "Iris Varela propuso a la Asamblea Nacional de Maduro confiscar los bienes y revocar la nacionalidad de los venezolanos fuera del país," 2021.

judgment handed down by a court in accordance with law."¹⁹² Furthermore, article 34 states that "the Venezuelan nationality is not lost upon electing or acquiring another nationality."¹⁹³ Besides being unconstitutional, it also does not agree with international law since article 6(b) from the *Strasbourg Declaration on the Right to Leave and Return* explains how "no person shall be deprived of nationality or citizenship in order to exile or to prevent that person from exercising the right to enter his or her country."¹⁹⁴ Finally, the case of the United States' Supreme Court *Trop v. Dulles* concluded that expatriation is a cruel and unusual penal punishment, since citizenship is "not a license that expires upon misbehavior."¹⁹⁵ These examples show how using expatriation as "punishment," completely contradicts not only international and domestic law, but also shows that other countries like the United States also believe this should not be permitted. Sadly, this case has not been an isolated one in the history of the chavismo and madurismo, since in 2014 the Cuban-Venezuelan actress Maria Conchita Alonso was also undergoing the process of getting her nationality revoked because she expressed a desired for the U.S. intervening in the country to depose the current government—despite the fact that no such process even exists in Venezuelan law.¹⁹⁶

Finally, the government has criminalized, stigmatized, and discriminated against Venezuelan individuals who seek to return home.¹⁹⁷ The sad reality of these migrants is that not only did they have to face discrimination in a foreign country, but also now in

¹⁹² Constitución de la República Bolivariana de Venezuela, 1999.

¹⁹³ Constitución de la República Bolivariana de Venezuela, 1999.

¹⁹⁴ Strasbourg Declaration on the Right to Leave and Return, article 6(b), 1986.

¹⁹⁵ Legal Information Institute, "Albert L. TROP, Petitioner, v. John Foster DULLES, as Secretary of State of the United States and United States Department of State," Cornell Law School, 1958.

¹⁹⁶ BBC News, "Venezuela inicia proceso para revocar nacionalidad a la actriz María Conchita Alonso," 2014.

¹⁹⁷ Organization of American States, 2020.

their own. As an example, president Nicolas Maduro accused returning Venezuelans of being “bioterrorists” that wanted to purposefully bring the COVID-19 virus into the country's borders.¹⁹⁸ Furthermore, high-ranking officials in the Venezuelan government and Maduro have publicly stated that they think the migrants return because of “karma” and they have called them “fascists and "camouflaged coup plotters” who do not deserve assistance.¹⁹⁹ The president also said that migrants crossing through illegal passageways were “contaminating their communities” and “killing their families.”²⁰⁰ David Smolansky, an OAS commissioner, believes that the "cruel and degrading treatment against Venezuelans who return to the country through border crossings, endangers their physical and psychological integrity and could lead to genocide."²⁰¹ This stigmatization and intimidation of an already vulnerable population only contributes to the unbearable conditions that the returnees have to confront. Moreover, Freddy Bernal, another high-ranking government official who has held a host of important government posts since the early days of Chavismo (he was one of Chavez's early comrades in coup attempts), established that the outside of houses would be marked with paint to indicate those who allegedly crossed the “controls” provided, threatening the citizens instead of providing them the protections that the laws guarantee.²⁰² The criminalization and otherwise terrorizing of these Venezuelan citizens is highly criticizable for violating their right to honor, since it is an affront to their dignity, and for disrespecting their private life, family, and home according to the published OAS report.²⁰³

¹⁹⁸ Welsh, Teresa. "Returning Venezuelans subjected to 'inhuman' treatment, report says," Devex, 2020.

¹⁹⁹ The Washington Post, "El gobierno de Maduro debe dejar de estigmatizar a quienes retornan por COVID-19," 2020.

²⁰⁰ Human Rights Watch, Stuck at Venezuela's Border with Covid-19 All Around, 2020.

²⁰¹ Deutsche Welle, "Retorno a Venezuela: segregación y estigmatización," 2020.

²⁰² Organization of American States, 2020

²⁰³ Organization of American States, 2020.

As previously mentioned, article 13(2) of the UDHR "everyone has the right to leave any country, including his own, and to return to his country," explicitly states the concept of the right to return to one's country.²⁰⁴ This, along with state practices, has led to the formation of a norm of customary international law that assures that an individual outside his or her country has the right to return to it. Furthermore, The Commission on Human Rights has affirmed in past circumstances, such as the Bosnia precedent in 1997, the right of all persons to return.²⁰⁵ Since at least 2014, the government of Nicolás Maduro has been using different tactics and committing multiple human rights violations, however, in this specific case Maduro's government has deprived returners of the right to return and free transit, prohibiting their entry and preventing Venezuelans who manage to cross the borders from circulating freely within the national territory to return to their states of residence.²⁰⁶ Consequently, the strategy of "prevention through deterrence" is not used as a means to deter immigrants but to impede the return of the country's own citizens. Therefore, the severity of the measures applied by the government are clear and its consequences and impacts are severe in the human rights aspect of the citizens trying to return.

In the first chapter of this thesis, specifically in the section titled "Right to return (as a citizen)," it was exposed that Hurst Hannum mentioned that restrictions to the right to return could be legitimate if, for example, it was to limit the spreading of a disease.²⁰⁷

Moreover, the *International Covenant on Civil and Political Rights* (ICCPR) in article

²⁰⁴ Universal Declaration of Human Rights, 1948.

²⁰⁵ Rosand, Eric, "The Right to Return Under International Law Following Mass Dislocation: The Bosnia Precedent?" vol. 19, issue 4, Michigan Journal of International Law, 1998.

²⁰⁶ Organization of American States (OAS), American Convention on Human Rights "Pact of San José de Costa Rica", article 22 Number 5, 1969.

²⁰⁷ Hannum, Hurst, 1987, pp. 4.

12(3) also mentions public health as a lawful reason to apply these restrictions. Given the COVID-19 pandemic one could think it applies to the Venezuelan case and, therefore, it would be legitimate for the current Venezuelan government to restrict the access of Venezuelan returnees without violating international and domestic law. However, in this specific case this restriction cannot be considered as legitimate since they are being used as punishment for the Venezuelans that emigrated before the pandemic. PASI camps do not fulfil basic human rights obligations or responsibilities and through previous examples we observe how even the inalienable rights have been taken away from the returnees. Xenophobia and discrimination has been encouraged by government officials in multiple and repetitive occasions, including Iris Varela's efforts of stripping Venezuelans that emigrated from their nationality and property. Hannum also specifies how restrictions in such rights are considered legitimate if "imposed for limited purposes in a fair and non-discriminatory manner," which is clearly not the case in Venezuela.²⁰⁸ Measures taken by the government are neither fair nor non-discriminatory and, consequently, there is no justification for the events that have taken place against nationals.

²⁰⁸ Hannum, Hurst, 1987, pp. 4.

CONCLUSION

Venezuela has been a country in crisis for several years, gradually worsening when Hugo Chavez Frías assumed the presidency. After Chavez's death, Nicolás Maduro assumed power and the situation rapidly worsened. Under the Presidency of Nicolás Maduro (2013-present), Venezuela's economy collapsed, shortages of basic supplies became widespread, human rights abuses became prominent, insecurity rates increased drastically, censorship became a dominant element in the country, only to mention a few of the components explained throughout this thesis. These and many other factors prompted the massive migration of Venezuelans to other Latin American countries, including the neighboring Colombia. This emigration wave has been characterized as "migration of despair."

After a considerable number of Venezuelans arrived in Colombia, they were offered some protections, for example, temporary legal status. However, when the COVID-19 pandemic started, this group of migrants found themselves in a difficult living situation—from lack of work and income to being categorized as "the other" and experiencing xenophobia and discrimination. These circumstances worsened particularly when Colombia decreed a national lockdown. Therefore, many decided to return to their home country, Venezuela, and networks directly linked to Venezuelan migration developed in Latin American countries in order to assist this group of citizens on their return. In Colombia, organizations such as “Asociación Ávila Monserrate”, “Somos Panas Colombia”, “Venezolanos por Decisión”, “Venezolanos en Colombia”, among

others, have played a significant role in informing, denouncing, and helping in this arduous process.²⁰⁹

To the returnees surprise, Maduro's administration started implementing measures to impede their return, thus violating international and domestic laws. On September 9th, 2020 The Organization of American States (OAS) issued a report on the "Situation of Venezuelans who have returned and seek to return to their country in the context of COVID-19."²¹⁰ The non-governmental organization Human Rights Watch published an article reporting the "abusive treatment of the returnees" and describing the humanitarian response that this situation has caused.²¹¹ The situation that has been denounced includes deplorable quarantine conditions—no food and water, non-existent social distancing, lack of access to medical attention, considering stripping returnees of their nationality and property, setting limits on how many Venezuelan citizens can enter the country in a day. UN groups, including UNOCHA and UNHCR, as well as nongovernmental groups, have provided support to returnees and have set up temporary shelters, medical tents, and supplied protective equipment or water and sanitation improvements.²¹²

The research question of this thesis is the human rights implications of the measures taken by the Venezuelan government in the Venezuelan-Colombian border during the COVID-19 pandemic. Given the magnitude of attention that this issue has received from the international community points to the severity of the impact and

²⁰⁹ Immobility in the Americas, "Venezuela."

²¹⁰ Organization of American States, "Situation of Venezuelans who have returned and seek to return to their country in the context of COVID-19," 2020.

²¹¹ Human Rights Watch, "Venezuela: Abusive Treatment of Returnees," 2020.

²¹² Human Rights Watch, "Venezuela: Abusive Treatment of Returnees," 2020.

consequences of these migration processes on the individuals affected and the human rights implications are clear and worrisome. In addition, this thesis argues that the mentioned measures' goal is the prevention or impediment of the return of citizens through "deterrence techniques" that, on the contrary, have been historically used by other countries to deter immigration. Well-founded evidence allows us to conclude that these measures are indeed similar to those in the "Border Patrol Strategic Plan 1994 and Beyond" and, through their implementation, the Venezuelan government is violating its own citizens "right to return."

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