

MIGRATION AND RIGHT TO WORK IN CHILE 2017-2022¹

MIGRACIÓN Y DERECHO AL TRABAJO EN CHILE 2017-2022

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ABSTRACT: The objective of this study is to analyze Venezuelan migration in Chile and the exercise of work as a human right. The methodology used is hermeneutic-documentary, which allows for the interpretation and analysis of documentary records related to the Venezuelan migration crisis and the response of the Chilean State. Migration policies, labor laws and the International Convention on the Protection of the Rights of All Migrant Workers [sic] and Members of Their Families are examined, as well as the reports of international and national organizations on the situation of Venezuelan migrants in Chile. The results reveal that Venezuela's migration crisis is one of the largest in the world, with millions of people displaced due to the country's political and economic instability. The flow of Venezuelan migrants to Chile has increased significantly in recent years, which has generated a series of problems and challenges for the Chilean state as it attempts to manage this increase. This is reflected in its migration policies and its ability to provide support and protection. The massive repatriations of Venezuelans before and during the COVID-19 pandemic suggest that Chile is struggling to provide employment opportunities and basic services to migrants.

Keywords: *Migration crisis, Refugees, Displaced persons, Crisis in Venezuela, Labor rights of displaced persons.*

RESUMEN: El objetivo de este estudio es analizar la migración venezolana en Chile y el ejercicio del trabajo como un derecho humano. La metodología utilizada es hermenéutica-documental, que permite interpretar y analizar registros documentales relacionados con la crisis migratoria de Venezuela y la respuesta del Estado chileno. Se examinan las políticas migratorias, las leyes laborales y la Convención Internacional sobre la Protección de los Derechos de todos los Trabajadores/as [sic] migratorios/as[sic] y de sus Familiares, así como los informes de organizaciones internacionales y nacionales sobre la situación de los migrantes venezolanos en Chile. Los resultados revelan que la crisis migratoria de Venezuela es una de las más grandes del mundo, con millones de personas desplazadas debido a la inestabilidad política y económica del país. El flujo de migrantes venezolanos hacia Chile ha aumentado significativamente en los últimos años, lo que ha generado a una serie de problemas y desafíos para el Estado chileno en su intento de manejar este aumento. Esto se refleja en sus políticas migratorias y su capacidad para del país para proporcionar apoyo y protección. Las

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repatriaciones masivas de venezolanos antes y durante la pandemia de COVID-19 sugieren que Chile está luchando para proporcionar oportunidades de empleo y servicios básicos a los migrantes.

Palabras clave: *Crisis migratoria, Refugiados, Desplazados, Crisis en Venezuela, Derecho laboral de los desplazados.*

INTRODUCTION

The right to work is a human right. It is incorporated in the political charter of all States as a fundamental guarantee³, as well as in international treaties and covenants⁴. Its disregard by the State entails responsibility for the violation of human rights so that the survival of any nation depends on its existence.

The International Labor Organization⁵ brings a global dimension to Social Law, thus delocalizing the action of human labor as a social instrument to fulfill the life project and producing an international regime capable of satisfying the regulation of the fulfillment of rights that, fundamentally, are located within the nation-state, but for reasons of transfer or migration, cross borders.

Cross-border human movements can be caused by various reasons and should not necessarily be referred to as migrants. Voluntary migrations due to economic or other situations and forced migrations due to war or violence. Both can be within or outside a country. The sensitive fact is that those who migrate in a planned manner enter the migratory regime of the receiving State, unlike forced or displaced migrants who have had to leave their homes in an emergency, leaving behind identification documents, studies, as well as an established home from which they have not planned to move. In most cases, the displaced lose all the economic resources they have left behind and must start their lives in total helplessness. This

³ A comparative review shows that all Latin American constitutions enshrine the right to work as a fundamental guarantee.

⁴ Refers to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (2005)/ International Convention No. 135 on Workers' Representatives (1971)/ Convention No. 121, Minimum Age Convention (1973)/ Abolition of Forced Labour Convention (1957) (No. 105)/ Freedom of Association and Protection of the Right to Organize Convention (1948)/ Freedom of Association and Protection of the Right to Organize Convention (1948) (No. 87)/ Right to Organize and Collective Bargaining Convention (1949)/ Right to Organize and Collective Bargaining Convention (1949) (No. 98) (No. 98) (No. 98) and Collective Bargaining Convention (1949)/ Workmen's Compensation Convention (1921)/ International Convention concerning Weekly Rest in Industry (1921)/ Night Work of Young Persons (Industry) Convention (1919)/ International Hours of Work in Industry Convention (1919).

⁵ It is a specialized agency of the United Nations that deals with matters relating to labor and industrial relations. It was founded on April 11, 1919, within the framework of the negotiations of the Treaty of Versailles. Its Constitution, sanctioned in 1919, is complemented by the Declaration of Philadelphia of 1944 [concept retrieved from: <https://www.cancilleria.gov.co/international/multilateral/united-nations/ilo>]

type of forced or displaced migrants are taken in by the United Nations Refugee Agency (UNHCR), acquiring refugee status, after assessment by international and domestic authorities (Abuelafia, 2020).

In this sense, the international refugee regime that operates as an organ of the United Nations System, present in each of the countries, establishes the particular parameters to produce the respective migratory identification that enables the migrant to exercise his/her right to work. However, what happens when there is a gap in this important obligation of the United Nations Refugee Office to address a migration crisis such as the one currently experienced in Latin America, which has its roots in Haiti, Colombia, Cuba, and Venezuela?

To guarantee migrant labor and that of their families, the States have granted each other the International Convention on the Protection of the Rights of All Migrant Workers [sic] and Members of Their Families, through which the General Assembly of the United Nations, producing resolution 45/158 enacting it, aimed to solve migrant labor and stop the exploitation of foreigners in foreign lands.

It is of utmost importance to reflect on this void, taking as a starting point the current complex migratory crisis in Venezuela. It is not a matter of judging, not even in a referential way, the political and ideological causes that have produced this phenomenon, which has generated one of the most powerful displacement crises that Latin America has experienced in recent years. But rather to identify the displaced mass with its flow of human mobility and its route through the continent until delimiting the observation to the case of displacement to Chile, in the period 2017- 2022.

The compass that guides the reflection aims to answer the following research question: Is the International Convention on the Protection of the Rights of All Migrant Workers [sic] and Members of Their Families insufficient to protect forced labor when the Chilean State does not provide solutions to displaced families? In this sense, to address the issue, the following research objective is intended to be achieved: To analyze Venezuelan migration in Chile and how they exercise their right to work as a Human Right.

In this sense, we start from the hypothesis that the International Convention on the Protection of the Rights of All Migrant Workers [sic] and Members of their Families is considered insufficient to regulate and solve the crisis of displaced Venezuelans in Chile, which has caused the Chilean State to carry out massive repatriations before and during the covid-19 pandemic, has carried out massive repatriations of Venezuelans before and during the covid-19 pandemic, which highlights the functional weakness of international public law on issues of protection of rights and the ineffectiveness of the United Nations system in the face of the Latin American crisis.

DEVELOPMENT

Work, migration, and displacement crisis in America

In the past, reference has already been made to the migration crisis and human security, and how these were affected when the covid-19 pandemic hit the world (Marcano, 2021). However, there is an essential element related to the ability to advance a life project through personal capabilities such as work, which needs a review. This is because, without the right to work, it is not possible to discuss security or any other kind of subjective right (Valencia et al., 2020).

As mentioned above, the right to work is a basic human right. It gives people the power to select and perform a lawful occupation under fair, just, and rewarding conditions of legal equity, without any form of discrimination based on gender, race, social status, or religion. In its essence, it is a subjective right of all people to have the opportunity to generate wealth through an activity they have freely chosen (Martínez Escamilla et al., 2012).

This right is developed in international covenants and agreements, such as the International Covenant on Economic, Social, and Cultural Rights, established in New York on December 19, 1966, and in the constitutions of nations as a fundamental guarantee. However, some circumstances and contingencies hinder the full realization of this right. Therefore, States must design public policies that respond to economic crises that affect employment opportunities. This will depend on the internal capacity of each State, as Kliksberg (1993)

mentioned in “Poverty, an issue that cannot be put off”. The decline in the ability of States to generate wealth based on the individual work of their citizens generates, in the long term, three interrelated situations: unemployment, crime and migration (Kliksberg, 1993).

According to sociological research (Domenech and Gil, 2016), a small percentage of the population of a country that satisfactorily meets the needs of its inhabitants emigrates of their own free will. Certain human collectives move from their nations in search of new job possibilities or to educate themselves. However, most people do so to flee from conflicts, political or religious persecution, acts of terrorism, or human rights violations that do not cease even when the displaced people cross the borders of adjacent countries.

The harsh reality faced by migrant workers throughout history has not changed considerably in terms of their fundamental rights. The challenges and uncertainties that displaced persons and migrants experience when leaving their countries of origin, affected by economic, cultural, psychological, linguistic, and social aspects, are magnified by the risks associated with illegality, a frequent situation for many workers who arrive at their destinations as undocumented, especially in countries where there are no clear policies for handling this type of circumstance.

As a result, displaced persons often fall victim to unscrupulous employers who benefit from their illegal status. According to several forums held in this century, only 14 of the 34 countries in the Americas had ratified the Migrant Workers Convention. Of these 14 countries, only one (Venezuela) had ratified the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). These two Conventions set out the general conditions, obligations, and policies that member states must implement regarding migrant workers, especially to ensure their fundamental rights. It was during the crisis of dictatorships that affected the countries of the Southern Cone that Venezuela implemented an effective migration reception mechanism that facilitated documentation, an essential element for politically displaced persons to integrate into Venezuelan society as a labor force and professional growth.

The International Convention for the Protection of Migrant Workers and their Families is a crucial international instrument in this field. So far, 20 countries have ratified the Convention,

including six Latin American and Caribbean nations. In addition, in 1999, the Commission on Human Rights appointed a Special Rapporteur on the human rights of migrants initially for three years, which has recently been extended for another three years because of the COVID-19 health crisis. The Commission has also issued several recommendations in this sector (Ascanio, 2022, p. 2).

In the context of the Organization of American States (OAS), the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights, in their broadest interpretation, cover the rights of migrant workers. Similarly, the Summits of the Americas System, whose technical secretariat is provided by the OAS, ECLAC, and the IDB, has recently incorporated the issue of migrant workers into its agenda as part of the process leading to the creation of regional and subregional treaties (DANE, 2024).

The report on these issues prepared by the Special Rapporteur of the Inter-American Commission on Human Rights (IACHR) of the OAS points to several cases involving circumstances that demonstrate disregard for the human rights of these workers. The report highlights several aspects, including the need to safeguard the right of immigrants to work and send money to their countries of origin, the right of Haitian and Venezuelan workers to a fair and diligent process in handling their legal status as migrants, preventing mistreatment by border patrols and reported cases of xenophobia in certain Latin American nations (Cavalcanti et al., 2021 a-b), and the susceptibility of Guatemalan and other Central American workers to exploitative labor practices and unequal treatment due to their need to transit through Mexican territory to the United States (Ministry of Planning and Development, 2015).

The report also refers to the complicated reality of Nicaraguans in Costa Rica, who are especially prone to exploitation due to their large numbers and the possibility that security forces on both sides of the Venezuela-Colombia border may act violently towards migrants, as security authorities cannot always differentiate them from common criminals. The report also criticizes the massive and arbitrary deportation of Haitians from the Dominican Republic.

The condition of Haitian workers is distinguished by numerous human rights violations, ranging from deplorable living and working conditions on the plantations to the massive and racially discriminatory deportations these workers have endured. Of greatest concern in the Southern Cone is the unstable situation of Peruvian, Bolivian, and Paraguayan workers in Argentina who are forced to work as illegal immigrants.

Labor challenges and displacement: Venezuelans in Chile

The massive influx of Venezuelan migrants has created significant challenges in terms of integration, employment, and safeguarding rights. The economic meltdown was fueled in part by the decline in oil production, Venezuela's primary export product. By 2020, oil production levels had fallen to lows not seen since the 1930s (Blau and Kahn, 2015). After maintaining an average of 2.8 million barrels per day (Mbpd) during 2008-2013, crude oil production declined to an average of 0.9 Mbpd in 2019 and reached its lowest point at around 0.4 Mbpd in mid-2020 (Chaves-Gonzalez and Echeverria, 2020). This drastic drop, which occurred before the implementation of oil sanctions by the United States in January 2019, reflected both domestic and foreign factors.

In particular, the decline in oil production is due to the collapse of the global oil price in 2015, mismanagement of the oil sector at the national level, reduced investment in the sector (evidenced by a decrease in the number of rigs to zero in June 2020), and a loss of human capital. As a result, despite being an oil producer, Venezuela has suffered from a generalized lack of fuel throughout the country, which has interfered with mobility and significantly increased transportation costs (Cheasty, 2015).

In the face of macroeconomic turbulence and inefficient management, the rest of the Venezuelan economy has also suffered severely and continues to face obstacles. According to official figures from the Central Bank of Venezuela (BCV, 2016), non-oil GDP experienced a drop of approximately 56 percent from the first quarter of 2013 to the same period in 2019. Construction was the most affected sector (96 percent), followed by financial services and manufacturing, with declines of 88 and 83 percent, respectively. The agricultural sector has also witnessed a marked decline in production. In addition, businesses continue to

face an unreliable supply of basic services, limited access to credit, and a shortage of skilled labor due to migration.

Social services and economic integration have also been seriously affected by the crisis. In response to the lack of resources for the provision of basic services, the government has decreased its presence in rural areas in favor of the capital, Caracas. In many regions, essential government functions such as policing, road maintenance, health care and public services have been neglected. Armed paramilitary groups have partially replaced the state security infrastructure near the Venezuelan-Colombian border (Abuelafia, 2020). In addition, the withdrawal of the government has led to the fragmentation of Venezuela into more localized and segmented economies with merely nominal links to Caracas. Parallel to this breakdown of internal economic connections, regions near Venezuela's borders have resorted to smuggling and cross-border trade to subsist. Farming communities in Venezuela's interior have fallen into subsistence as the deteriorating road system and gasoline shortages decimated internal trade. Tourist attractions, however, have persisted and cater primarily to high-income individuals, generating an exodus that has surpassed historical boundaries.

In the context of its macroeconomic volatility, Venezuela experienced one of the longest periods of hyperinflation in recorded history (Ortega and Peri, 2014). Prices escalated to a state of hyperinflation as huge fiscal deficits averaging 16.8% of GDP between 2014 and 2019 were monetized.

With the fall in production and the outbreak of hyperinflation, labor market conditions worsened steadily and remain unfavorable. Even though more than half of the working-age population is employed, the labor participation rate is the lowest in all of Latin America (Orrenius, 2017). Employment under formal conditions has declined, while self-employment has grown in relative proportion, providing alternative avenues of income. The proportion of people in formal employment in the public and private sectors decreased by 15 percentage points between 2014 and 2022, while the proportion of self-employed and independent workers grew by 14 percentage points, representing 45% of total employment in the country. Labor income was also impacted when hyperinflation decimated the purchasing value of wages, leading large numbers of families to flee the famine, often crossing borders on foot.

As a consequence of the economic collapse, social conditions have worsened, and poverty has grown markedly. According to the ENCOVI 2019/2022 national survey of living conditions, income poverty almost tripled from 33.1% of the population in 2013 to 96.2% in 2019/2022, and extreme poverty increased almost sevenfold to 79.3% in the same time interval. The country is suffering a reversal in the progress achieved in past decades in terms of health and nutrition, particularly for mothers and children, as well as in the control of communicable diseases.

The disastrous economic and humanitarian conditions have unleashed the largest migration crisis in the history of our continent, surpassing even the crisis experienced by Syrians during the War and by Turkey (Del Carpio and Wagner, 2015).

In reality, the emergency in Venezuela has caused displacements similar to those of the world's largest migratory crises in the last fifty years. Nearly seven million Venezuelans are estimated to have left their country by August 2023, surpassing the numbers seen in Ethiopia (1980), Iraq (1988, 2004), South Sudan (2014), and the number of refugees fleeing the conflict in Ukraine (6.3 million by August 2022 according to UNHCR). The number of Venezuelan migrants corresponds to 23 percent of the population in total, less than in Syria (2012) and Afghanistan (1977), where it exceeded 35 percent of the population five years after the beginning of the crises. Although these displacements originated from armed conflicts, they are not much different from the unofficial war in Venezuela, marked by organized crime and the presence of armed gangs such as the Tren de Aragua. A recent example is the case of the Tócorón Prison, where the leader of this transnational gang, known as “el niño Guerrero”, remains at large. In addition, state violence against the opposition further aggravates the situation. All these factors of expulsion have forced Venezuelans to flee, added to the crisis of confidence in a judicial system increasingly controlled by the government. Thus, Venezuela has become the country with the highest migration in recent years for a country without conflict of the most unprotected classes of society (Santamaria, 2022).

The destination and composition of Venezuelan migration flows have varied as the crisis has worsened. Most migrants have settled in other Latin American countries, while some have

moved to other regions, mainly the United States and Spain. Colombia has taken in the largest number of migrants, totaling 2.5 million or approximately 5 percent of the Colombian population as of August 2022. Chile, Ecuador, and Peru have also received significant flows, with a combined number of migrants exceeding 2 million (more than 3 percent of the Colombian population on average). Although Aruba and Curaçao have received smaller numbers of migrants, they represent a much larger proportion of their respective populations, ranging from 9 to 15 percent. With the arrival of the pandemic, migration flow slowed in 2020 as countries closed their borders for health reasons. However, the migration flow revived in 2021-2022 when countries reopened their borders and are expected to increase further as some countries have begun to grant protected status to Venezuelan migrants (such as Colombia and Ecuador).

The demographic composition of migrants resembles that of local communities in the region's host economies. Nearly two-thirds of migrants from Venezuela are of productive age and about half are female. Migrants who opted for countries neighboring Venezuela (Brazil, Colombia, Guyana, and Trinidad and Tobago) are younger and have higher education compared to local communities. However, their level of education is lower than that of Venezuelans who moved to countries farther away (such as Argentina, Chile, and Costa Rica). Nevertheless, in recent years, between 2019 and 2022, a considerable number of working-class Venezuelans with limited economic resources and little or no education have arrived in Chile. This complicates the regularization of their migratory status, which in turn prevents them from working and consequently, from carrying out their life project.

The COVID-19 health crisis, with the respective limitations on mobility and border closures, decreased Venezuelan migration flows from an average of 1.7 million individuals per year in 2018-19 to 0.6 million in 2020, mostly in the first months of the year. However, migration flows resumed in the 2021-22 period: 1.3 million migrants left Venezuela in late 2020, and are projected to continue, albeit at lower rates than before the pandemic. The factors that triggered the migration crisis are expected to worsen and the situation of Venezuelans is expected to become more dramatic. Given the great uncertainty about economic and social expectations, the authors propose two severe migration scenarios that estimate that those

residing abroad will reach 12.4 million in 2025, about 3.4 million more than the current number of Venezuelan migrants.

The main exit from the Venezuelan crisis has been migration, which raises questions about the impacts on the labor market in Chile. Migrants are younger and better educated than local populations, but their employment search has encountered a diverse set of labor conditions in host economies: a shared culture as an advantage, but legal and non-legal obstacles as challenges. In terms of labor outcomes, migrants of productive age have suffered higher unemployment, are more likely to work initially in the informal sector, and earn lower wages than local workers. The wage gap, which widens with educational attainment, points to a misallocation of migrants' human capital. In general, Venezuelan migration tends to increase labor informality in host countries, but there is no evidence that it displaces local workers. Labor participation, employment, and informality of local workers remain virtually unchanged, although there is some downward pressure on wages, especially in the informal sector. Given the productivity losses attributable to labor force maldistribution in the short term, GDP growth will benefit from a deeper integration of immigrants into the formal economy.

A primary mechanism by which migration affects economic performance in other nations is through the labor market. The arrival of immigrants directly increases the labor supply. The overall impact on equilibrium labor market outcomes, such as wages, labor force participation, and employment, depends on several factors that are related to both the constitution of the migrants and the characteristics of the host country. These include the timing, extent, and demographic composition of migration movements, the characteristics, and rigidities of the labor market in the host country, and whether migration is being driven by pull (labor demand) or push (labor supply) factors (Pulido-Pescador and Varón, 2020).

Previous studies focusing on economic migration motivated by pull factors to (mainly) advanced economies report positive effects of migration on labor outcomes. When complementarities exist between native workers and immigrants, immigrants can stimulate a shift of natives into new occupations and promote total productivity with benefits to the economy. The resulting gains in total income may justify the very limited negative effects

found by the empirical literature on wages and employment of native workers, especially when long-run horizons are considered.

However, the same is not true for displaced persons who have higher initial unemployment in the host economy. Despite the numerous opportunities and the existence of international agreements and conventions that protect migrant labor and that of their families, the existence of a conventional vacuum hits those most in need. It would seem that the weakness of international treaty law becomes evident when these norms of *Ius Cogens* are ignored by nation-states. Chile is a clear example of these violations with the massive deportations that have occurred in recent years, in addition to the impossibility of the displaced to integrate into Chile. They follow the migration policy of the United States.

The experience of displaced persons from Venezuela in Chile shares some similarities with previous refugee crises, as push factors are forcing migrants from Venezuela to leave their country regardless of economic conditions in the receiving country. As with Venezuelans, refugees from other migratory movements have faced greater legal or non-legal obstacles to entering labor markets, posing challenges to full economic integration. There is also empirical evidence that refugees' labor market outcomes are significantly worse than those of the native population (Paez and Vivas, 2017).

During the peak of the Venezuelan exodus before the pandemic, most labor markets in Latin America had moderate unemployment, approximately 10 percent, and low formality of less than 70 percent, with considerable variation between countries. In Chile, the Venezuelan migrant population represents less than 3 percent of the local population, with enormous potential for displaced persons in the labor market.

CONCLUSIONS

The research question posed at the beginning of this study and the proposed hypothesis has not been fully corroborated due to the constant flow of events that make reflection a place of disillusionment before the Law. The migration crisis in Venezuela has developed in three main stages. The constitution of migrants has changed since the beginning of the Venezuelan

crisis, and the demographic and socioeconomic conditions fluctuate according to the severity of the collapse of economic and social conditions, however, there are no absolute or definitive resolutions: law and inequity coexist.

First stage: the first wave of migration took place in the early 2000s, before the economic crisis. The initial migration was composed of highly educated individuals with excellent professional skills and ample financial possibilities. Many of these migrants were businessmen or prominent members of the political opposition.

Second stage: the middle class began to leave Venezuela in 2014. People with technical training and young university graduates, although without work experience, left the country in search of better job opportunities abroad when the economic crisis began to affect them. Many ended up taking formal jobs but without qualifications. This phase also included several political opponents and human rights defenders.

Third stage: between 2017 and 2022, when the Venezuelan economy completely collapsed, migrants tended to come from low-income households, with lower tertiary education, few job skills, and limited financial resources. The number of these migrants leaving the country increased exponentially at this stage, with a higher prevalence of families, often households headed by a single mother with several young children, leaving Venezuela, compared to previous waves that consisted mainly of adult men traveling alone or adult couples. One reason behind this change is that many of those who left Venezuela during this period traveled to join a family member who had already emigrated in previous years. This stage also demonstrated the dismantling of social trust in the Judicial System, which was evidenced by the persecution and exile of the members of the Supreme Court of Justice sworn in July 2017. Many of these judges had to assume unqualified jobs.

The objective of this study is to investigate how the economic, political, and humanitarian crisis in Venezuela has led a large number of Venezuelans to seek refuge and opportunities in Chile. Chile has experienced a significant increase in the number of displaced Venezuelans in recent years, which has posed challenges in terms of reception. Chile has implemented policies that allow displaced Venezuelans to access the formal labor market, which represents

an important opportunity. However, following the pandemic and the political crisis that the government of President Sebastián Piñera went through in October 2018, that policy ceased.

Despite favorable policies, displaced Venezuelans face obstacles in seeking employment, including lack of recognition of qualifications and discrimination. However, since Chile has ratified international agreements, such as the Convention Relating to the Status of Refugees, which establish the principle of non-refoulement, prohibiting the expulsion or return of persons facing persecution, the deportations that were initiated were suspended. Therefore, it is understood that international agreements also guarantee that displaced persons have labor rights, including equal treatment in employment and fair working conditions.

Finally, the situation of displaced Venezuelans in Chile reflects both the efforts made to comply with international agreements and the persistent challenges in terms of employment and full integration. As Chile continues to receive displaced Venezuelans, it is essential to continue working on policies and programs that ensure access to employment opportunities and protection of their rights accordingly.

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