

NO STRANGERS AT THE GATE

Collective Responsibility and a Region's Response
to the Venezuelan Refugee and Migration Crisis

Michael J. Camilleri and Fen Osler Hampson

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Acknowledgments and Methodology

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The World Refugee Council is an independent global body made up of 24 political leaders, policy advisors, academic experts and civil society representatives from around the world. Established in May 2017 by CIGI and under the leadership of former Canadian Minister of Foreign Affairs Lloyd Axworthy, the World Refugee Council has analyzed the present refugee system and developed innovative ideas for addressing its principal shortcomings.

The Inter-American Dialogue's Venezuela Working Group is a task force of prominent hemispheric leaders and experts committed to formulating and actively promoting policy responses to the crisis in Venezuela. This is the first of a series of reports that will be published under the Venezuela Working Group's guidance. Chaired by former Costa Rican President Laura Chinchilla and former US Ambassador Donna Hrinak, its members include Andrés Serbin (Argentina), Diego García-Sayán (Peru), Feliciano Reyna (Venezuela), Jamal Khokhar (Canada), Jeff Davidow (United States), José Ignacio Hernández (Venezuela), Juan Carlos Pinzón (Colombia), Juan Gabriel Valdés (Chile), Roberta Jacobson (United States), Rosario Córdoba (Colombia), Serena Joseph-Harris (Trinidad and Tobago), Vanessa Rubio (Mexico), and Verónica Zubillaga (Venezuela).

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EXECUTIVE SUMMARY

Venezuelans are leaving their country in growing numbers, fleeing the country's acute economic, humanitarian, and governance crisis. Since 2015, an estimated 1.6 million have emigrated as a result of this crisis—the largest such exodus in the history of the Americas. An increasing number of Venezuelans are seeking asylum around the world, while an even greater number have benefited from alternative forms of regularization elsewhere in South America. The existing patchwork response to the forced displacement of Venezuelans has proven a useful band-aid, reflecting a laudable solidarity among Venezuela's neighbors, albeit one that is straining under growing pressure. While some countries are reducing barriers to regularization, others have implemented policies that hinder Venezuelans' ability to seek asylum or even cross their borders. With no end in sight to the crisis in Venezuela and the forced exodus of its citizens, the situation urgently requires a bolder and better coordinated response. With adequate creativity and political will, collective action problems can be solved and a race to the bottom averted—to the benefit of both displaced Venezuelans and the countries that receive them.

The challenges posed to destination countries by mass migration from Venezuela are undeniable. Host countries, at the national and local levels, often struggle to expand their fragile social safety nets to meet the needs of both host populations and displaced Venezuelans. However, experience shows that treating the challenge as a passing one—or worse, trying to cut off migratory flows without addressing the root causes of the crisis—will prove counterproductive for all involved. It will fuel exploitation, marginalization, and criminal enterprises, while delaying the productive integration of Venezuelan refugees and migrants into their adopted communities. Sustainable solutions for both recipient countries and forcibly displaced Venezuelans must be grounded in this reality and based on the principle of shared responsibility. From this foundation, it is necessary to improve humanitarian response resourcing, institutional infrastructure for refugee protection, and coordination of migration policies, while tackling growing xenophobia and a lack of accountability.

In order to overcome the aforementioned challenges, this report lays out a plan of action that includes the following:

- The international community invests in collecting and assessing data on the needs, characteristics, and vulnerabilities of Venezuelan refugees and migrants, including differentiated impacts among women and girls, children, and indigenous and afrodescendant communities.
- The Organization of American States (OAS), the United Nations (UN), and other stakeholders, including relevant states, convene a donors' conference to address the humanitarian budget shortfall.
- Stakeholders increase the predictability and amount of long term funding mechanisms using private sector funding and the proceeds of confiscated assets from corrupt Venezuelan officials and other criminal actors.
- Governments avoid border closures and maintain, strengthen, and harmonize mechanisms that allow displaced Venezuelans to regularize their status, obtain employment opportunities, and access basic social services such as health, education, and housing.
- Major destination countries agree to commitments on refugee and migration policies based on their international legal obligations and the principle of collective responsibility.
- Efforts are made to integrate Venezuelans into host communities, in light of the protracted nature of the crisis.
- International organizations assist local and national governments, as well as civil society organizations, in tackling xenophobia.
- High-ranking Venezuelan officials responsible for corruption and human rights abuses are held accountable through asset seizures, visa bans, and criminal prosecution by the International Criminal Court.

1 Introduction: The Scope of the Crisis

Contemporary Venezuela suffers from a profound, growing, and multifaceted crisis. Years of mismanagement have led to a crippling economic contraction and an inflation rate projected by the IMF to reach 1,000,000 per cent in 2018. Citizens confront chronic shortages of food and medicineⁱ as well as some of the world's highest levels of violence.ⁱⁱ The governing regime has also systematically dismantled democratic checks and balances, consolidating its power through fraudulent elections, violent repression, and the cynical use of scarcity as a tool of control.

Unsurprisingly, Venezuelans are fleeing the country, generating the largest refugee and migration flow in the history of the Western Hemisphere. Recent estimates put the size of the Venezuelan diaspora between 2.3 and 4 million peopleⁱⁱⁱ iv, with migration having accelerated since Nicolás Maduro took power in 2013. Over 1.6 million people are estimated by the UN to have emigrated since 2015, equivalent to about 4.9% of Venezuela's 2018 population.^v Increasingly desperate Venezuelans are looking to their Latin American neighbors and beyond as the crisis intensifies in magnitude and scope. Nine out of ten have sought refuge in countries within Latin America, especially Colombia and Peru^{vi}, but Venezuelans are now also the leading requesters of asylum in the United States and Spain.^{vii} With no end in sight for the economic, humanitarian, and governance crisis in Venezuela, the forced migration challenge will only grow.

Latin America, which shares common bonds of language, culture, and history, has a tradition of solidarity toward refugees. In the 1970s, Venezuela itself—at the time a comparatively democratic and prosperous nation—provided refuge to many intellectuals and political exiles forced to flee persecution by dictatorships else-

where in the region.^{viii} In the 1980s, in response to the civil wars in Central America, ten countries in Latin America—including Venezuela—signed the Cartagena Declaration on Refugees, expanding refugee protections to those fleeing internal armed conflicts, generalized violence, or massive human rights violations. To a significant extent, the regional response to Venezuelan refugees and migrants has been marked by a similar spirit of solidarity. Latin American countries—particularly neighboring Colombia, where authorities report receiving 5,000 Venezuelans per day—have taken important steps to ensure freedom of movement and to provide avenues for legal stay and access to basic rights for those fleeing Venezuela. This is laudable and encouraging.

Nonetheless, this report identifies a number of significant challenges that must be confronted in order to respond effectively to the ongoing Venezuelan displacement crisis. These include: insufficient resources for humanitarian response; lack of institutional infrastructure for refugee protection; incipient coordination and harmonization of migration policies; a rising incidence of xenophobia; and an emergence of more restrictive policies toward Venezuelan refugees and migrants. In addition, a troubling absence of accountability exists at the root of the crisis: the Venezuelan leaders who are driving their citizens to despair and imposing enormous costs on neighboring countries.

Meeting these challenges will require reinforcing the existing regional solidarity toward Venezuelan refugees and migrants, and combining it with greater creativity, collective responsibility, and political will from the international community. This report aims to galvanize such an effort and offer concrete proposals for action.

"An estimated 2.3 million people had fled [Venezuela] by 1 July – roughly 7 per cent of the total population – due largely to lack of food or access to critical medicines and health care, insecurity and political persecution. This movement is accelerating...Cross-border movement of this magnitude is unprecedented in the recent history of the Americas, and the vulnerability of those who leave has also increased..."

*Michelle Bachelet, United Nations High Commissioner for Human Rights
Inaugural Address to the Human Rights Council, September 10, 2018*

2 The Venezuelan Exodus

Historically a popular destination for immigrants and a refuge for those fleeing persecution elsewhere, Venezuela witnessed the beginning of an emigration trend in the 1980s as a result of a drop in global oil prices. With the election of President Hugo Chávez, outward migration increased. From 1998 to roughly 2014, Venezuela experienced its first wave of migration, fueled initially by Chávez’s socialist agenda and exacerbated by various events, including a failed coup in 2002, the strike by state oil company workers (and their subsequent dismissal) in 2003, Chávez’s re-election in 2006, and Chávez’s death in 2013. Since Nicolás Maduro assumed power in 2013, emigration from Venezuela has accelerated dramatically.

Estimates on the size of the Venezuelan diaspora vary widely. In August 2018, the United Nations estimated the Venezuelan diaspora at 2.3 million,^x while a *Consultores 21* study published in January 2018 suggested that 4,091,717 Venezuelans had left the country, most of them in the last two decades.^x

The latest International Organization for Migration (IOM) figures indicate that the primary destinations for Venezuelan migrants are Colombia (870,093), Peru (354,421), the United States (290,224), Spain (208,333), Chile (105,756), Argentina (95,000), Panama (75,990), Brazil (50,000), and Ecuador (39,519).^{xi} Actual figures are likely higher. Ecuador, for example, registered the entry of 453,000 and departure of 382,628 Venezuelans—a net increase of over 70,000—between January and July 2018 alone.^{xii} These figures also do not count the approximately 250,000 Colombian-Venezuelans who have recently returned to Colombia. All told, over one million people emigrated from Venezuela to Colombia in the 15 months prior to June 2018.^{xiii}

2.1 Shifting Migrant Profiles

The most recent phase of Venezuelan migration is unique not only because of the rate at which people are leaving the country, but also because of *who* is leaving. Throughout the 2000s, emigration from Venezuela was composed primarily of professionals and the middle class. The Central University of Venezuela lost almost 700 faculty members between 2011 and 2015, with similar trends visible among scientists and medical professionals^{xiv} as well as many key players in the Venezuelan oil industry.^{xv}

In the aftermath of Chávez’s death, low oil prices exacerbated the effects of economic and political mismanagement with calamitous

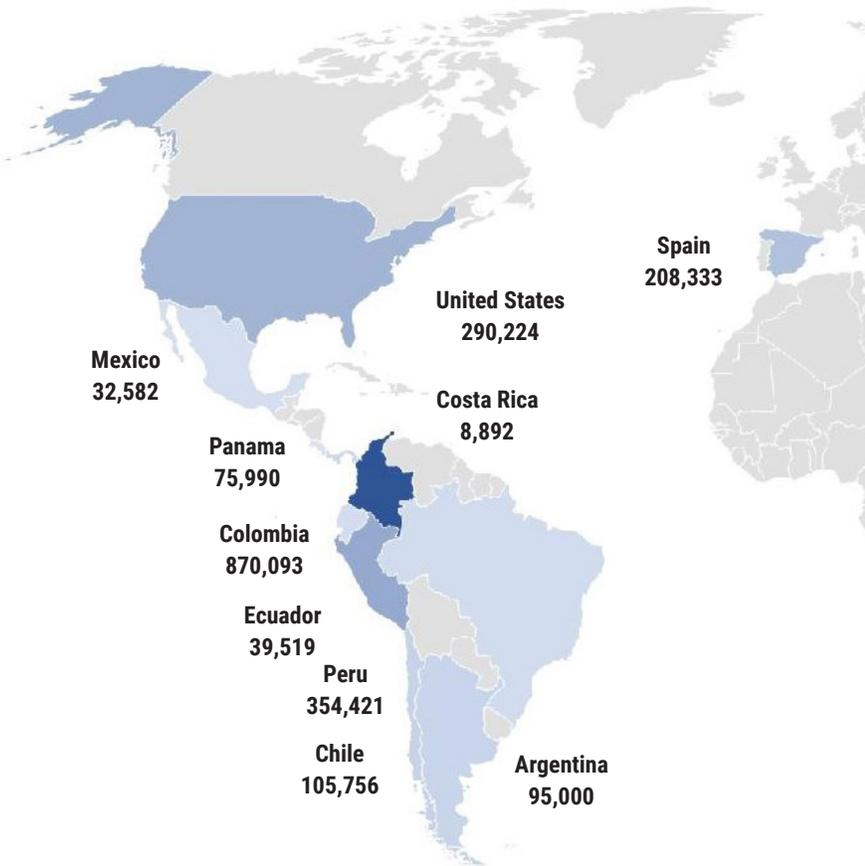


FIGURE 1. ESTIMATED VENEZUELAN POPULATION IN MAJOR DESTINATION COUNTRIES AS OF JULY 2018

Source: UN Migration Agency, *Migration Trends in the Americas*, July 2018

consequences. During the first year of Maduro’s presidency, political repression was accompanied by a deepening economic crisis, which has since worsened. The IMF recently predicted that in 2018 inflation would reach 1,000,000 per cent and real GDP would decline by double digits for the third year in a row. The Venezuelan economy has shrunk by half in the past five years.^{xvi}

What’s more, food shortages are so severe that in 2017 Venezuelans were reported to have lost an average of 19 pounds in comparison to the previous year.^{xvii} A scarcity of medicines and medical equipment has had an acute impact on public health, ushering in a malaria epidemic and the return of once eradicated diseases such as measles and diphtheria.^{xviii} The IMF observes that the “collapse in economic activity, hyperinflation, and increasing deterioration in the provision of public goods (health care, electricity, water, transportation, and security) as well as shortages of food at subsidized prices have resulted in large migration flows, which will lead to in-

tensifying spillover effects on neighboring countries.^{xxix}

An accompanying breakdown in public security has made Venezuela one of the most violent countries in the world, with a murder rate of over 70 per 100,000 in 2016.^{xx} Strong evidence points to the involvement of state security forces in a disproportionate number of these killings. Former Venezuelan chief prosecutor Luisa Ortega revealed that in 2016, 21,752 people were murdered in Venezuela, of whom 4,667 (21%) were killed by security forces.^{xxi} A separate report by the Public Prosecutor's Office on the actions of law enforcement agencies in the framework of operations known as "Liberation Operations of the People" (Operativos de Liberación del Pueblo, OLP) showed that the police and military had killed 505 persons, the vast majority (65%) under 25 years of age.^{xxii}

The severity of the crisis in Venezuela has both accelerated migration and changed its composition as people from the most impoverished segments of Venezuelan society increasingly join the exodus. Many of today's refugees and migrants travel by road and even on foot to neighboring countries, often arriving in precarious circumstances.^{xxiii} The desire to flee Venezuela is strong: a late 2017 poll by *Consultores 21* found that 40 per cent of Venezuelans wished to leave the country, primarily for economic (63 per cent) or political (29 per cent) reasons.^{xxiv} As the exodus grows, migration is also becoming a source of survival for those who remain in Venezuela: according to some estimates, Venezuela received at least \$1 billion in remittances in the past year.^{xxv}

DEFINITIONAL DIVIDES

The term "refugee," as established in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, refers to someone who is outside of their country of origin "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, member of a particular social group or political opinion."^{xxvi} This definition has since been expanded in important ways, including through regional instruments such as the 1984 Cartagena Declaration on Refugees.

In the early 1980s, many Central American countries were experiencing armed conflicts or political turmoil that caused tens of thousands to flee their home countries due to generalized violence and instability. In November 1984, ten Latin American countries – Belize, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, and Venezuela – held a "Colloquium on International Protection for Refugees and Displaced Persons in Central America, Mexico and Panama" in Cartagena, Colombia which resulted in the Cartagena Declaration on Refugees.

The Declaration reaffirmed the principles of the 1951 Convention and 1967 Protocol while expanding the definition of refugee to include "persons who have fled their country because their lives, safety 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."^{xxvii}

The original Colloquium set the stage for a regional meeting on refugees and displaced persons that took place every ten years and has led to three subsequent declarations relating to the rights of refugees and migrants in the region: the San Jose Declaration in 1994, the Mexico Declaration in 2004, and the Brazil Declaration and Plan of Action in 2014.^{xxviii} The latter – formally "A Framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean" – was adopted in Brasilia in December 2014 by 28 governments in Latin America and the Caribbean,^{xxix} and laid out several commitments and a plan of action to mitigate crises of forced migration and displacement in the region.^{xxx}

Based on this regional legal framework, in March 2018 UNHCR issued a "Guidance Note on the Outflow of Venezuelans," urging countries that receive Venezuelans to provide appropriate international protection in line with both the 1951 Refugee Convention and the Cartagena Declaration. UNHCR observed that "while individual circumstances and reasons for these movements vary, international protection considerations have become apparent for a very significant proportion of Venezuelans."^{xxxi} Similarly, the Inter-American Commission of Human Rights (IAHCR) approved a resolution on March 2, 2018 noting the "multiple and massive violations of human rights of the majority of the Venezuelan population" and calling on governments in the Americas to recognize the refugee status of Venezuelans in accordance with the 1951 Convention and the Cartagena Declaration, including by considering collective protection responses such as prima facie or group determination of refugee status.^{xxxii}

2.2 Regional Response

The flow of migrants from Venezuela is mixed. Some who leave the country are fleeing individualized political persecution by a repressive regime, and clearly meet the classic definition of refugee. Many others meet the expanded Cartagena Declaration definition, though precisely how many depends in part on the interpretation of its provision for “other circumstances.”^{xxxiii} Still others might be classified as economic migrants. These distinctions matter because although the human rights of all migrants are protected under international law, certain legal protections are afforded uniquely to refugees: notably, the principle of non-refoulement, which protects refugees from deportation back to the country where they fear persecution.

Encouragingly, many Latin American countries have either incorporated the broader Cartagena Declaration definition of refugee into their legislation or applied it in practice, often via executive decree.^{xxxiv} This includes common destination countries for Venezuelan refugees and migrants such as Argentina^{xxxv}, Brazil^{xxxvi}, Chile^{xxxvii}, Colombia^{xxxviii}, Ecuador^{xxxix}, Mexico^{xl}, and Peru^{xli}. Meanwhile, Costa Rica^{xlii}, Panama^{xliii}, and Trinidad and Tobago^{xliv} define refugees consistent with the Refugee Convention but not the expanded definition of the Cartagena Declaration. Curacao—while a constituent country of the Kingdom of the Netherlands, which has ratified the 1951 Refugee Convention and 1967 Protocol—does not acknowledge being bound by either the Convention or its Protocol, and does not have legislation governing refugee protection or asylum procedures.^{xlv}

Notwithstanding the incorporation of the broader, Cartagena Declaration refugee definition into the legal frameworks of most major destination countries, and the calls by UNCHR and the IACHR to apply this Declaration to those fleeing Venezuela, a comparatively small—albeit growing—number of Venezuelan migrants have applied for refugee status. There has been a nearly fifty-fold increase in the number of Venezuelans seeking asylum worldwide between 2014 and 2018;^{xlvi} As of September 30, 2018, there are 346,584 Venezuelan asylum seekers globally.^{xlvii} The number would almost certainly be higher were there not practical obstacles to applying for asylum, which is often a lengthy and cumbersome process. Even in countries that have taken the laudable step of incorporating the expanded Cartagena Declaration into domestic law, national systems for adjudicating asylum claims are often slow, bureaucratic, and—as a result—incapable of meeting the surging demand from Venezuelans. Of the hundreds of thousands of applicants, very few have successfully obtained refugee status: out of the total 282,180 asylum claims filed between 2014 and June 2018, only 5,661 (2%) were accepted.^{xlviii}

Latin American countries have legalistic traditions and generally consider themselves bound by their international treaty obligations, including those pertaining to refugee protection. But most have no prior experience with the practical realities of a refugee

crisis. Authorities in Colombia, for example, told the authors of this report that they were accustomed to processing 20-30 asylum requests per year, a number that has jumped to nearly one thousand. As a result, it is taking a year or longer to process claims, during which asylum applicants are not legally authorized to work. The growing backlog of asylum applications in destination countries for Venezuelans suggests this problem is not limited to Colombia (see chart below).

Total Pending Asylum Applications by Venezuelans at End of Year 2015-17^{xlix}

Country	2015	2016	2017
Argentina	4	57	178
Brazil	969	4,302	22,315
Canada	157	355	998
Chile	17	260	1,586
Colombia	68	324	462
Costa Rica	241	1,057	3,253
Curacao	3	13	655
Italy	26	118	915
Mexico	4	116	3,183
Panama	310	695	3,687
Peru	112	3,553	36,062
Spain	1,740	4,435	12,465
Trinidad and Tobago	4	34	1,108
United States	10,498	28,350	57,250

In some cases, the significant gap between official policy and practical reality regarding refugee acceptance may not simply be a matter of institutional weakness: by rendering access to asylum all but illusory, governments incentivize Venezuelans who qualify for refugee status to opt for alternative forms of regularization that are often temporary in nature and do not offer the same protections, but that allow for much quicker processing and access to basic services.

At the same time, it would be mistaken to say that the low number of successful asylum applications by Venezuelans denotes a lack of solidarity on the part of destination countries. Particularly in South America, governments have kept their borders open to Venezuelans and provided alternative forms of legal stay that are relatively accessible: as of September 30, 2018, the number of Venezuelans who have secured alternative forms of legal stay was 845,021, with the highest numbers in Colombia, Chile, Peru, Panama, Argentina, and Ecuador.¹

The names of the programs of alternative legal stay vary, as do their precise requirements and entitlements. Largely beginning in 2017, as Venezuelan migration was accelerating, many countries in the region introduced programs to facilitate Venezuelan migration. Argentina continues to apply the MERCOSUR travel permit to incoming Venezuelans despite Venezuela's suspension from the bloc, and has taken steps to facilitate entry for Venezuelans who may lack the requisite documents, including waiving the requirement for police clearance in February 2018.^{li} In March 2017, Brazil approved Normative Resolution No. 126,^{lii} which created a residence permit to allow residents of countries not included in the MERCOSUR residence agreement to live and work in Brazil for up to two years. In April 2018, Chile introduced a Visa of Democratic Responsibility that allows Venezuelan migrants to stay and work in the country for one year, with the possibility of one-time renewal as well as that of applying for permanent residency.^{liii} In July 2017, Colombia created the *Permiso Especial de Permanencia* (PEP) granting Venezuelans two years of legal residency, including the right to work and access public health care.^{liiv} In January 2017, the Peruvian government created a *Permiso Temporal de Permanencia* (PTP) to allow Venezuelans who had arrived in Peru by a certain date to work as well as gain access to education, health, justice and other rights. Also in January 2017, Ecuador introduced the Ley de Movilidad Humana, which made it possible for any South American citizen to freely enter Ecuador with only their national identity card and remain for up to 180 days.^{livi} That same year, Ecuador also approved the UNASUR visa, which allows Venezuelans to live and work in Ecuador for two years with the possibility of a one-time renewal.

The result is an improvised, discretionary, and patchwork response to the Venezuelan refugee and migration crisis, but nonetheless one that represents a lifeline for hundreds of thousands of Venezuelans, allowing them to regularize their status, integrate productively, and access basic services in another country. The PEP in Colombia, for example, allowed 376,572 Venezuelans to regularize their status, and a registry process conducted in mid-2018 will permit another 442,462 Venezuelans to do so.^{liiv} This represents a significant deployment of state capacity and resources to respond to the forced migration crisis.

Naturally, there are challenges: these programs are by definition temporary and therefore tenuous, and depend on the discretion of governments rather than the application of binding international treaty commitments. They are, as discussed, seldom combined with a robust system for granting permanent refugee status to those that merit it. In some cases, satisfying the requirements can be expensive or onerous, particularly when it requires submitting Venezuelan government documents such as passports, which have become extremely difficult to obtain.^{liiii} Without the means or the documentation to apply for any form of legal stay, many Venezuelans remain in an irregular situation.^{lix} Furthermore, there are signs that these improvised regularization

mechanisms are becoming more restrictive even as the Venezuelan exodus shows no signs of abating. For instance, Chile's new Visa of Democratic Responsibility requires Venezuelans to apply at the Chilean consulate in Caracas and present a valid passport, whereas in the past Venezuelans could enter the country on a tourist visa and then legalize their status. Colombia ceased in February 2018 to issue *Tarjetas de Movilidad Fronteriza*, which had allowed Venezuelans to cross freely into Colombian border towns to obtain food or medicine.^{lix} Ecuador and Peru announced plans in August 2018 to require Venezuelans to enter with passports rather than national identification cards,^{lix} though in Ecuador the requirement was later withdrawn after a judge ruled against it.^{liii}

Of the hundreds of thousands of Venezuelan asylum applicants, very few have successfully obtained refugee status: of 282,180 asylum claims filed between 2014 and June 2018, only 2% were accepted.

Nevertheless, it is important to acknowledge that the countries bearing the brunt of Venezuelan migration have thus far responded by keeping their borders relatively open and by creating alternative pathways to legal stay that—while imperfect—represent tangible expressions of solidarity and political will.

2.3 Key Gaps and Challenges

Notwithstanding the notable steps taken by the international community—particularly countries in South America—to address the Venezuelan refugee and migration crisis, key gaps exist at every stage of the migration cycle, from entry to processing to regularization. As detailed below, the challenges start at the root of the problem in Venezuela. They encompass both existing and emerging deficiencies in the reception and international protection of those forcibly displaced, with the operational challenges most acute in countries bordering Venezuela. There are further challenges associated with regularizing the status of refugees and migrants consistent with domestic and international law. Finally, recipient countries are only beginning to wrestle with the need to integrate refugees and migrants productively into their adopted societies and protect them from exploitation and abuse. First, it is important to recall that the exodus from Venezuela is politically driven. Venezuelans flee not from war or natural disaster, but from the avoidable consequences of failed gov-

ernance—economic, social, and political. The contours of these failures are well documented. Human rights oversight bodies, for example, have detailed the Venezuelan government’s political repression, dismantling of democratic institutions, and responsibility for the “enormous problems with access to food, health care, and adequate housing for large segments of the population.”^{lxix}

The countries bearing the brunt of Venezuelan migration have thus far responded by keeping their borders relatively open and by creating alternative pathways to legal stay that—while imperfect—represent tangible expressions of solidarity and political will.

However, there has been relatively little discussion of accountability for Venezuelan leaders, specifically in relation to their responsibility for the refugee and migration crisis that has victimized their citizens and imposed ballooning costs on neighboring countries and the international community.^{lxxiv} One exception is a report prepared by the OAS Secretary General and a panel of independent legal experts that finds reasonable grounds to believe that crimes against humanity have been committed in Venezuela. Among the arguments advanced in the report, the authors posit that the regime-driven humanitarian crisis and resulting forced migration of millions of Venezuelans constitutes the crime of persecution on political grounds as defined in Article VII of the Rome Statute of the International Criminal Court (ICC).^{lxxv} In February 2018, the Prosecutor of the ICC opened a preliminary examination into the situation in Venezuela, but her announcement made no mention of the humanitarian situation or Venezuelans being forced into exile.^{lxxvi}

Second, gaps exist at the point of reception of Venezuelan refugees and migrants, many of whom are in need of immediate food, shelter, and/or medical care when they cross the border into Colombia or Brazil. Local and national governments, UN agencies, humanitarian organizations, and religious groups are in many areas working diligently to meet the basic needs of those arriving from Venezuela. The donor community has delivered some of the funding needed for these efforts, notably the United States, which has provided \$95 million in humanitarian assistance since the start of the 2017 fiscal year.^{lxxvii}

Nonetheless, as of September 2018, UNHCR had raised just over half of its annual financial requirements to respond to the Venezuela situation.^{lxxviii} Humanitarian response, as well as subsequent integration efforts, are also hindered by a lack of data on the characteristics and needs of Venezuelans as they cross the border

(Colombia’s thorough survey, the Administrative Registry of Venezuelan Migrants (RAMV) conducted in April-June 2018,^{lxxix} remains unique in the region).

Brazilian authorities, in partnership with UNCHR, have opened nine shelters in the border cities of Boa Vista and Pacaraima offering food, health, and shelter to Venezuelans, including two facilities devoted exclusively to indigenous migrants.^{lxxx} In Guyana, the government announced in July 2018^{lxxxi} it would create a temporary settlement for approximately 260 Venezuelans, with a plan to transition them into self-reliant farming. The government of Colombia has opened just one underutilized shelter in the border city of Cúcuta, leaving civil society organizations and the Catholic Church to try to meet the needs of the poorest Venezuelans.^{lxxxii} Still, around 1,000 Venezuelans sleep on the streets of Cúcuta every night,^{lxxxiii} and the groups involved in humanitarian response expressed to the authors that the needs of arriving Venezuelans significantly outstrip their resources.

Colombia, with the second highest number of internally displaced persons (IDPs) in the world, has developed a relatively robust normative framework and institutional infrastructure to address the issue of displaced persons. This infrastructure includes a landmark Constitutional Court decision (T-025 of 2004) and Victims and Land Restitution Law, as well as a Victims’ Unit in the executive branch. Colombia’s experience with IDPs may hold lessons for responding to the influx of Venezuelan migrants, but the existing programs remain very expensive to administer, and there is strong political resistance to extending policies for Colombian IDPs to displaced Venezuelans.

Third, while UNHCR has determined that a significant portion of those leaving Venezuela merit international protection, there is a critical dearth of robust mechanisms for asylum determination in receiving countries. In some cases, institutional weakness is exacerbated by a lack of political will, and systems for processing asylum requests are left poorly resourced or excessively complex in order to deter such requests.

This is particularly evident in Caribbean countries, some of which do not have formal refugee legislation despite being signatories to the 1951 Refugee Convention, the 1967 protocol, and the Brazil Declaration.^{lxxxiv} As Trinidad and Tobago does not have a formal Refugee Status Determination (RSD) mechanism and its Immigration Act is silent on the matter,^{lxxxv} it has been relying on UNHCR’s support to register and assist refugees. In 2014, it adopted a refugee policy that ostensibly grants refugees the right to stay in the country, to work, to receive medical care, and other basic rights.^{lxxxvi} However, in April the government came under fire for forcibly deporting 82 Venezuelan asylum seekers before their claims could be processed (the government claimed they left voluntarily).^{lxxxvii} On August 1st, the Prime Minister of Trinidad and Tobago announced that the country will not accept any more Venezuelans despite its multilateral obligations, and it “will not permit the United Nations

to make it into a refugee camp.^{lxxviii} Venezuelans asylum seekers in Trinidad and Tobago have been arrested^{lxxix} and face stigma and abuse both from members of society and police and prison guards.^{lxxx}

Similarly, the Dutch ABC islands – Aruba, Bonaire, and Curacao – have not proven particularly welcoming of forcibly displaced Venezuelans. In April, Dutch Foreign Minister Stef Blok announced that the Netherlands would send a support team from its Immigration and Naturalization Services (IND) to help with processing refugees, but argued that most of the Venezuelans are economic migrants who the Netherlands has no obligation to accommodate. As such, the Netherlands donated 100,000 euros to increase the capacity for detention centers for undocumented migrants coming to Curacao.^{lxxxi} In 2017, Curacao deported 1700 Venezuelans^{lxxxii}, and in March 2018 deported nine Venezuelan women who were on a hunger strike while detained for irregular migration.^{lxxxiii} Authorities in Curacao claimed that since it was not a signatory to the 1951 Refugee Convention^{lxxxiv}, it was not obligated to respect UNHCR's call to the international community to refrain from repatriating Venezuelans. Aruba has adopted similar responses, regularly detaining and deporting Venezuelans^{lxxxv} without consideration of their claims or status. This policy has been condoned by the Dutch Foreign Ministry.^{lxxxvii}

In contrast to formal asylum requests, as discussed in the earlier section, mechanisms for medium-term regularization of migration status in several Latin American countries are far more expansive and simple to access, and have benefitted hundreds of thousands of Venezuelans. However, there is little if any harmonization between these policies, and an effort by the Lima Group to enhance coordination on migration policy has thus far produced little.^{lxxxviii} A lack of consensus and collective action are serious potential vulnerabilities. As the number of Venezuelan refugees and migrants grows—and the costs to neighboring countries with it—the political pressure to adopt stricter migration policies will likely increase, as has already occurred to differing degrees in Colombia, Peru, Ecuador, and Chile. When Peru introduced a passport requirement, the number of Venezuelans entering the country quickly dropped by half.^{lxxxix} This did nothing to slow the flow of people fleeing Venezuela, but rather passed more of the burden for accommodating them to Peru's neighbors. The risk going forward is that the existing patchwork of uncoordinated, discretionary migration policies gives way to a race to the bottom, whereby countries that can limit the entrance of Venezuelans do, while those that cannot—notably Colombia, which shares a 2200 kilometer border with Venezuela—are left to shoulder ever increasing costs. Furthermore, closing avenues for legal migration fuels illicit economies such as extortion and racketeering, to the detriment of already vulnerable Venezuelans who are placed at the mercy of parastatal armed actors.^{xc}

Fourth, obstacles to obtaining proper documentation give rise to a final challenge: productively integrating Venezuelans into the societies where they are likely to live for the foreseeable future. Where

they lack documentation, Venezuelan migrants are forced into the informal sector, leaving them vulnerable to labor exploitation and recruitment by armed groups. This in turn drives down wages for native workers, which can fuel xenophobia.^{xcii} In one particularly striking incident, residents of Pacaraima, Brazil mounted a protest against Venezuelan migrants that became so violent that as many as 1,200 migrants were forced to flee back to Venezuela.^{xciii} Such incidents underscore the urgency of addressing the migration crisis in a way that accounts for the protection needs of displaced Venezuelans as well as the strain on impacted communities.

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Among the most vulnerable groups of migrants are Venezuelan women, who face the risk of sexual exploitation, trafficking, and having to sell sex in order to survive. There is an increased risk of physical violence and damage to Venezuelan women's psychological wellbeing, particularly if they travel alone and are unfamiliar with migration routes or processes.^{xciii xciv} Reports of sex trafficking of Venezuelan migrant women are pervasive^{xcv}, with reports of women trafficked as far as Mexico after being kidnapped by Colombian criminal gangs^{xcvi}; held hostage; and systemically raped and sexually exploited after arriving in Trinidad and Tobago^{xcvii} as well as the Dominican Republic,^{xcviii} where they have also been forced into serving as drug mules.^{xcix} The absence of basic security and other options for employment have forced many Venezuelan women, particularly in Colombia, to turn to prostitution. According to Bogota's Women's Secretariat, as of July 2018, 99.8 per cent of Bogota's foreign prostitutes are Venezuelan, with over two thirds having tried and failed to find other opportunities.^c

3 Recommendations for Action

Venezuela's political, social, and economic breakdown has given way to a metastasizing regional crisis with no foreseeable end in sight. The Venezuelans fleeing their country are the human face of this crisis. Responding effectively to their humanitarian and protection needs will require a coordinated regional effort supported by the broader international community. While South American countries have thus far displayed, to varying degrees, a heartening degree of solidarity toward Venezuelan refugees and migrants, contending with the migrant exodus over the coming months and years will require ever greater creativity and effort. While the challenges will be formidable, with sufficient political will and collective responsibility they can be navigated successfully in ways that serve the best interests of both Venezuelans and the countries and communities receiving them. The efforts should focus on five areas:

3.1 Humanitarian Relief and Response

Every day, thousands of Venezuelan refugees and migrants leave their country, many of them in search of medicine and food. President Maduro, refusing to acknowledge his country's humanitarian crisis, has steadfastly rejected the need for foreign assistance. Nonetheless, there is evidence that the Venezuelan government is quietly allowing increased supplies of medicine and medical supplies into the country. While this remains the case, the international community should maximize opportunities to provide as much support as can be distributed by the multilateral, non-profit, and diaspora organizations best placed to deliver assistance within Venezuela, while continuing to pressure the Venezuelan government to admit humanitarian assistance and remove foreign exchange controls that act as a barrier to remittances.

For its part, the international community can also facilitate the flow of remittances to Venezuela by acting quickly to address instances in which anti-money laundering measures inadvertently complicate the work of individuals and organizations sending aid to Venezuelans. These actions could serve to mitigate the suffering of sick Venezuelans and potentially slow the flow of migration.

For the foreseeable future it is almost certain that millions of Venezuelans each year will settle in foreign countries. Most of them will require access to social services such as health care and education. Encouragingly, the regularization mechanisms available to Venezuelans in the primary Latin American destination countries provide at least basic access to such services, as well as entry to the labor market. This benefits not only displaced Venezuelans but host countries as well, by accelerating their positive economic contributions.^{ci} Better data is needed regarding the needs and characteristics of this population, including to match the skills of

newly arrived Venezuelans with gaps in the labor market and to minimize downward pressure on wages, but also to identify vulnerable communities of migrants and administer adequate protection and basic resource provision.^{cii}

All of these efforts will cost money. UN agencies including UNHCR, IOM, the World Food Program, the World Health Organization and the Pan American Health Organization, as well as local and international relief, development, and religious organizations face funding shortfalls in responding to the immediate humanitarian needs of Venezuelans. Host countries, at the national and local levels, confront even greater challenges in expanding their often-fragile social safety nets and basic services to meet the needs of both host populations and displaced Venezuelans. Support from the international community is needed urgently to improve the quality and coverage of existing national systems to serve both hosts and migrants.^{ciii}

How can this be funded?

1. **Donors' conference.** In the short term, a donors' conference convened by the OAS, the UN, or an ad hoc group of countries could help to address the budget shortfall for UN humanitarian agencies and potentially for local and national programs, including through involvement of the private sector. In addition, the Inter-American Development Bank (IDB) announced plans in September 2018 to create and administer a regional fund that would generate as much as \$1 billion in concessional loans over the next two years for countries impacted by the forced migration crisis.^{civ} All such efforts merit the support of the international community.

Looking further ahead, creative funding mechanisms that move beyond the voluntary contribution model should be strongly considered. Three such mechanisms deserve specific consideration:

2. **Private sector financing.** The first involves private sector financing to assist destination country governments in funding services for the displaced. This could include securities in the nature of municipal bonds to attract the financial services sector and take advantage of investor interest in the economies of Colombia, Peru, Ecuador, and other major destination countries. Those bonds could be attached to a continuous and reliable revenue stream (toll roads, utilities, water and sewage) and would include tax incentives to attract investors to those regions of the country where many forcibly and internally-displaced persons are located.
3. **Seize proceeds of Venezuelan corruption and criminality.** Second, the international community, led by the United States, should aggressively pursue the ill-gotten proceeds of Venezu-

elan corruption and criminality, likely totaling tens of billions of dollars (the U.S. Treasury Department estimates \$2 billion has been stolen from state oil company PDVSA alone^{cv}), and repurpose them to help the victims of the current regime.^{cvi} Currently, Venezuela has more than US\$3 billion that are frozen in the global financial system.^{cvi} Recently, for example, the United States announced that it had confiscated a \$20 million jet belonging to a front man for Diosdado Cabello, the designated president for Venezuela's National Constituent Assembly.^{cvi} While frozen assets stolen from a country's treasury would under normal circumstances be returned to that country, the kleptocratic nature of the Venezuelan regime makes it impossible to ensure that the funds would go to the benefit of the Venezuelan public. As such, a more appropriate use of the funds—and one that would partially offset the economic costs imposed by the Maduro government on its neighbors—would be to repurpose seized assets into funding for organizations and governments providing services to Venezuelan refugees and migrants. There is precedent for this. For example, in a settlement of civil forfeiture cases against the son of the dictatorial president of Equatorial Guinea, the defendant agreed to relinquish \$30 million in assets derived from corruption. The proceeds were used for the benefit of the people of Equatorial Guinea, with \$20 million being administered through a charitable organization.^{cix} Given the unique position of the U.S. financial market and the specialized expertise of U.S. investigators, the United States should take the lead in coordinating an international effort to locate, seize, and appropriately distribute ill-gotten Venezuelan assets. Bipartisan legislation introduced in the U.S. Senate in September 2018 called for this.^{cx}

- 4. Confiscate criminal assets.** The third idea relates to the confiscation of assets derived from the commission of crimes, and the use of the proceeds to fund services in local communities for schools, health care, and infrastructure which would benefit both the local population and forcibly displaced Venezuelans as part of a broader strategy of community resilience and crime prevention. Given the continued prevalence of organized crime, particularly narco-trafficking, in Colombia, this idea seems particularly attractive. In August 2018, the Colombian public prosecutor's office reported having seized 10.7 trillion Colombian pesos (approximately US\$3.56 billion) in illicit assets over the previous two years.^{cx} Under Colombian law, when criminal proceeds are seized, a government entity called FRISCO^{cxii} (Fund for the Rehabilitation, Social Investment and Fight against Organized Crime) administers the funds, which are normally distributed among law enforcement, prisoner rehabilitation and social welfare agencies. Devoting at least part of the confiscated assets to funding local services in communities, especially in border areas, which are struggling with a surfeit of migrants and perceptions of growing criminality due to migration would constitute good preventive practice to the benefit of the entire local community, including Venezuelan migrants. This is

a practice that could also be followed by other states in the region as part of a broader, concerted strategy of intertwining crime prevention and social rehabilitation.

3.2 Improved Normative and Institutional Frameworks for Protection of Migrants and Refugees

The vast majority of forcibly displaced Venezuelans arrive in South American countries that formally adhere to the expanded refugee definition established in the Cartagena Declaration. However, there are destination countries such as Panama, Costa Rica, and Trinidad and Tobago that do not adhere to this expanded definition, and there are even some (the Dutch ABC islands) that consider themselves exempt from the 1951 Refugee Convention and 1967 Protocol. Achieving universal recognition of the Cartagena Declaration standard remains an important objective. However, even in those countries that formally incorporate this standard into domestic law, the institutional infrastructure for processing asylum requests and applying the Cartagena Declaration in practice is very weak, leading to long backlogs in refugee processing and a resulting disincentive to claim such status even among those who qualify under applicable law.

Some possible steps for improving the normative and institutional frameworks for international protection in the region include:

- 1. Improve refugee status determination mechanisms across the region.** This entails encouraging destination countries that have not signed onto the Cartagena Declaration to do so. Those that have already done so should—with support from UNHCR—vastly improve their asylum processing systems. Given the underlying conditions in Venezuela and the scope of the migration crisis, strong consideration should be given to collective determinations of refugee status, as recommended by the IACHR.^{cxiii} Importantly, especially given the current long processing times, applying for asylum should not represent a bar to benefiting from alternative forms of legal stay and accompanying access to the labor market and basic social services while an application is considered.
- 2. Strengthen alternative regularization mechanisms.** Alternative forms of legal stay that permit forcibly displaced Venezuelans to regularize their status represent the most positive element of the current regional response to the refugee and migration crisis. These mechanisms should be maintained and strengthened, including by addressing existing gaps and weaknesses such as the discretionary nature of some of the mechanisms, many of which (such as the PEP in Colombia) are established by presidential decree rather than legislation. Another flaw is setting an unrealistically high bar for application, such as requiring difficult to obtain documentation, charging elevated fees, or establishing cutoff dates beyond which newly arrived Venezuelans can no longer access the

regularization mechanism. In Colombia, there is also ambiguity over whether birthright citizenship applies to children born to parents with a PEP, raising concerns of statelessness.^{cxiv}

3. **Eliminate barriers to legal status.** To the greatest extent possible, the conditions for obtaining legal status should be streamlined, simplified, and codified. Governments have legitimate security motivations for wanting to screen incoming migrants. However, such considerations should be balanced against humanitarian considerations, the realities of obtaining necessary documentation in present-day Venezuela, and national self-interest. Ultimately, keeping Venezuelans in the shadows neither benefits them nor serves the interests of the societies that need them to integrate and join the productive, licit economy as quickly as possible. Migrants in an irregular status are particularly prone to victimization by criminal groups, be it women and girls forced into sex work, young men recruited by organized crime and guerillas, or migrants employed in the drug trade. In this way, strict entry requirements can very plausibly fuel more crime than they prevent.^{cxv}

3.3 Harmonization and Responsibility Sharing

The current patchwork of national mechanisms for alternative legal stay represents, despite its limitations, the most robust component of the current regional response to forced displacement from Venezuela. Even here, however, there are warning signs that demand a more coordinated regional response. Chile's introduction of the far stricter Visa of Democratic Responsibility and Peru's introduction of a passport requirement for entry could be harbingers of efforts by some countries in Latin America to restrict Venezuelan migration. While such a race to the bottom would do little to slow the exodus from Venezuela, it would mean that countries with the greatest geographic proximity to Venezuelan population centers—particularly Colombia—are forced to absorb an increasing proportion of the forcibly displaced. The best way to avoid this and to ensure a reasonable sharing of responsibility among countries in the region is to harmonize national policies:

1. **Keep borders open.** A first and fundamental component of burden sharing is to avoid border closings that force the flow of migrants to one or a few countries.
2. **Common standards for refugee processing.** The second is to agree on certain minimum, common standards for refugee processing and mechanisms for alternative legal stay. Human Rights Watch has called for a region-wide temporary protection regime granting Venezuelans legal status for a fixed period of time. This is a laudable objective, though any regional scheme would also need to account for the protection needs of those fleeing criminal violence in the Northern Triangle of Central America and, increasingly, political violence and persecution in Nicaragua. A more achievable goal in the short

term is to seek a “no backsliding” commitment from major destination countries whereby they promise not to further restrict Venezuelan migrants in a unilateral manner. From there, consensus should be sought on measures to harmonize and coordinate national policies over time. These are fundamentally political issues, though ones with far-reaching humanitarian consequences, and they will need to be addressed at the highest political levels. At the same time, a regular conference of national migration authorities can serve as a useful coordination mechanism and technical platform for developing policy proposals for leaders' consideration.

3. **Burden sharing and policy harmonization.** The third is to create a regional or international forum to secure concrete, coordinated commitments on refugee and migration policy. The OAS has proposed convening such a forum, and would be a logical venue for such a meeting given its regional scope and institutional infrastructure, though it could be hampered by a plodding consensus-based decision process and political divisions over the democratic breakdown in Venezuela. Alternative conveners might include UNHCR, the Lima Group (though Ecuador, at a minimum, would need to be incorporated), or an ad hoc grouping of ideologically diverse hemispheric countries. The United Nations recently named a special representative for Venezuelan refugees and migrants in the region, and the OAS Secretary General created a working group to address the situation of Venezuelan refugees and migrants. These mechanisms, ideally working together, can help galvanize the political processes needed to solve the collective action problem and facilitate burden sharing.

3.4 Sustainable Solutions

The idea that refugees are a temporary phenomenon is largely fiction. In 2016, about two-thirds of the world's refugees were living in protracted situations, more than four million of them in displacement situations that have lasted more than 20 years.^{cxvi} The current trajectory of Venezuela—authoritarian consolidation combined with economic freefall—points to a similarly protracted and indeed mounting displacement challenge. Even if democracy were restored tomorrow, it would likely be years before the economic and governance situation stabilized sufficiently for most Venezuelans to return home. For the countries that host them, sustaining a large population of displaced Venezuelans—both economically and politically—will require effective integration solutions. Countries receiving Venezuelan refugees and migrants should, with the support of the international community, focus on integrating Venezuelans into their societies and economies rather than clinging to the illusion that they will be going home in the short term. This means protecting migrants and refugees from xenophobia and exploitation, and removing barriers to entry into the formal labor market. In order to sustainably accept, integrate and employ incoming Venezuelans, the relevant actors should do the following:

1. **Facilitate labor market entry.** In addition to issuing work permits to those awaiting refugee status determinations or holding visas for alternative legal stay, governments should take necessary measures to validate diplomas and professional qualifications. They should legislate against and monitor labor exploitation—which hurts not only immigrants but the native population by pushing down wages.
2. **Combat exploitation of women and girls.** Governments should implement targeted strategies specifically to deter and detect exploitation of women and girls, including efforts to better document this phenomenon. Sexual and gender-based violence is a major protection issue for refugee women and girls throughout the displacement process, and in Colombia the authors received multiple reports of Venezuelan migrants forced into the sex trade or situations of domestic servitude.
3. **Eliminate barriers to education.** Governments should also avoid unnecessary obstacles that limit migrants' opportunities for economic advancement, such as disincentivizing them from sending their children to school by denying them school lunches.
4. **Prevent and counter xenophobia.** International organizations, including UNHCHR and the OAS, should assist local and national governments as well as civil society organizations in launching campaigns against xenophobia—which is on the rise. Research shows that xenophobic attitudes are difficult to change once they set in, and that political leadership plays a key role in the tone of the debate. Effective messaging campaigns can address host community fears, highlight contributions of refugees, allow refugees to speak on their own behalf, and raise awareness and understanding among journalists.
5. **Bring business and civil society to the table.** The private sector and civil society—particularly diaspora groups—should be an integral part of policymaking at the local level and have a seat at the table when governments meet to share best practices and lessons learned on integrating Venezuelan refugees and migrants. Canada's model of private sponsorship of refugees and efforts by corporations such as Chobani, WeWork, and

Starbucks to employ refugees should be held up as examples to follow.

3.5 Politics of Accountability

However effectively the regional and international communities manage the Venezuelan displacement crisis, it will only be solved when Venezuelans no longer feel the need to flee their country in large numbers. This will require a change in behavior from the Venezuelan government. The regime of President Nicolás Maduro—which denies the very existence of a humanitarian crisis and refuses international aid—is at best indifferent to the current exodus and at worst views it as a beneficial escape valve to relieve political pressure. A thorough analysis of the appropriate international response to human rights violations committed by the Venezuelan government, including potential invocation of the Responsibility to Protect doctrine, is beyond the scope of this report. Nonetheless, responses to the refugee and migration crisis should not be divorced from discussions of accountability for the actions driving the exodus.

Policy options in this area are somewhat limited, but asset freezes, targeted sanctions and visa bans—actions already taken to varying degrees by the United States, Canada, the European Union, and Panama—should be considered, alongside national or international prosecutions. An encouraging step in this regard is the unprecedented decision by the governments of Argentina, Canada, Chile, Colombia, Paraguay and Peru (later joined by France and Costa Rica) to officially request an investigation of crimes against humanity in Venezuela by the Prosecutor of the International Criminal Court. The ICC Chief Prosecutor's decision on whether to formally open an investigation was still pending when this report went to press.

Notes

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