

**GUARANTEEING SOCIAL SECURITY RIGHTS FOR IRREGULAR
MIGRANTS IN COLOMBIA.**

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Abstract

Currently, the issue of access to social security for irregular migrants in Colombia poses a significant challenge for the State in guaranteeing fundamental rights, particularly in the areas of health, labor, and social protection. In response to this situation, the authors adopt a critical stance advocating for the implementation of more inclusive and sustainable policies. Although various regulatory efforts have been promoted—such as the Special Stay Permit (PEP) and the Temporary Protection Statute—these mechanisms, mainly aimed at the Venezuelan population, remain insufficient given the scale of the migratory phenomenon and its implications for both migrants' rights and the institutional capacities of the State. This study analyzes the migratory phenomenon and the current regulatory framework, presents a comparative analysis with other countries, and offers public policy proposals. These proposals adopt a comprehensive and humanitarian approach, aimed at removing regularization barriers and ensuring equitable access to basic rights. This contribution seeks to enrich the debate on migration and social protection by highlighting its impact on inclusion, stability, and social development, which are essential to building a democratic and social State governed by the rule of law.

Keywords: *Irregular migration; social security; human rights; public health; public policy*

1. Introduction

This article analyzes one of the most impactful phenomena for States and human rights: migration. In particular, it addresses the irregular situation in which a considerable portion of the population that becomes migrant currently finds itself.

The study focuses on the Colombian case—a country that has traditionally been a sender of migrants but, over the last decade, has transformed into a significant receiving country.

This transformation is due, in part, to its geographical location and to the political, economic, and social crisis affecting Venezuela, which has turned Colombia into a temporary or permanent destination for thousands of people seeking better living conditions and protection.

Through the analysis of normative, statistical, and jurisprudential sources, the main needs of the migrant population in irregular situations in Colombia are identified, with particular emphasis on the lack of access to social security as a critical obstacle to the effective enjoyment of their human rights.

A comparative analysis is also included with countries such as the United States, Argentina, Brazil, and Spain considered key references due to both their migratory experience and their historical relationship with Colombia. Although the country has made significant progress in inclusion and protection, it still faces substantial challenges in ensuring effective, comprehensive, and inclusive care for this population.

2. Methodology

The present study was conducted under a qualitative approach, following the guidelines of Hernández [1] and Martínez [2], and was structured as a documentary investigation focused on the systematic and rigorous examination of normative, jurisprudential, and doctrinal sources related to the guarantee of the right to social security for migrants in an irregular situation in Colombia. The research also incorporated a process of theoretical review [3] and the elaboration of a state of the art aimed at mapping recent academic developments on the object of study [4], which made it possible to situate the problem within the existing body of knowledge and to identify analytical gaps susceptible to inquiry.

Methodologically, an analytical–descriptive method was adopted, articulating the examination of primary legal sources (constitutions, laws, decrees, judicial decisions, and international treaties) with the analysis of secondary sources (doctrine and comparative studies). This design was complemented by a comparative study of normative and policy experiences in the United States, Argentina, Brazil, and Spain, which provided a useful comparative lens to contrast different models of social protection in relation to migratory irregularity.

The choice of this methodology facilitated the construction of a critical interpretation grounded in the human rights paradigm, insofar as it allowed tracing the degree of legal effectiveness, institutional limitations, and tensions between normativity and practice regarding access to social security by migrant groups lacking regular legal status. Taken together, the qualitative approach, the documentary character of the study, and the analytical–descriptive method provided solid epistemological foundations to problematize the legal configuration of the right under analysis, make existing gaps visible, and contribute to a reasoned discussion on the enforceability of rights in contexts of human mobility.

3. Results

This study presents a qualitative and documentary analysis of the conditions of access to social security rights for populations in irregular situations in several countries and in Colombia. Based on the study of laws, jurisprudence, and doctrine, common patterns of inequality and

limited access to rights were identified, revealing significant barriers to the guarantee of human rights.

It was found that access to health care and social security constitutes the most urgent and recurrent need. Although the Colombian system recognizes health care as a fundamental right since without it the realization of other rights becomes difficult migratory regularization remains an essential prerequisite for inclusion in the social protection system. The lack of documentation prevents affiliation with the health system, access to formal employment, and, in general, the full exercise of other fundamental rights. Although the Colombian State has implemented mechanisms such as the *Permiso Especial de Permanencia* (PEP) and the *Estatuto Temporal de Protección para Migrantes Venezolanos* (ETPV), the coverage of these measures remains limited in comparison with the large number of migrants who continue to live in irregular conditions. The study thus proposes not only the elimination of administrative barriers but also the formulation of public policies that guarantee access to rights.

Needs of the Migrant Population in Colombia

Migration has been a constant social phenomenon throughout human history. Since ancient times, tribes have had to move in search of food, safe areas, tools, and other essential resources to improve their quality of life and that of their communities. Over time, with the formation of societies, governments, and states, the migratory phenomenon began to be influenced by political, economic, and social factors.

Guillén et al. [5], argue that “a diversity of economic, social, and political events—some minor, others emblematic and even cruel have constituted the backbone of the foundations of migration” (p.283). Thus, contemporary migratory movements affect multiple dimensions, both in the receiving population and in the territories of origin, exacerbating existing inequalities, even between geographically distant regions.

This phenomenon consists of the movement of a population group from its usual place of residence to other places, either within the same national territory or across borders. According to the most recent United Nations estimates, in 2024 the number of people living in a country other than their country of birth reached approximately 304 million, representing almost 3.8% of the world’s population. This figure shows sustained growth since 1980, when it was 2.3%, increasing to 2.8% in 2000, 3.2% in 2010, and 3.6% in 2020. Rodríguez and Busso [6], note that “most migrants tend to be young, with a greater presence of men; this can be explained by the fact that youth is characterized by crucial decisions and events such as entering university, joining the labor market, marriage, adventure, low risk aversion, and experimentation among other particularities that promote migration” (p.45). This perspective highlights how migratory expectations are linked to processes of the life cycle. However, in many cases, the motivations that drive migrants to embark on their journeys are not fulfilled, generating vulnerability that compels host states to respond with effective measures to guarantee access to basic rights such as health, housing, and work.

Since 2013, the economic crisis in Venezuela caused by the fall in oil prices, expropriation policies, and severe hyperinflation that led to cash shortages has forced a large number of citizens to leave the country. In this context, Colombia, as a neighboring nation, became one of the main destinations for the migrant population.

According to the most recent estimate from the Observatory on Migration, Migrants, and Human Mobility (OM3) of Migración Colombia, as of January 31, 2024, there were 2,857,528 Venezuelan migrants in the country.

Based on the above, the high migratory flow represented a major challenge for Colombia, as the country lacked adequate infrastructure, regulations, jurisprudence, and social programs to address the impact and collateral consequences of such a large population movement. To this context are added the structural limitations of the social security system, particularly in terms of its coverage and capacity to respond to the needs of all residents within the national territory, including migrants.

Among the main needs of the irregular migrant population in Colombia is access to adequate housing, as part of this population lives in precarious conditions—including homelessness, occupation of public spaces, or temporary shelters which are limited and insufficient to meet high demand. Despite these limitations, a significant proportion of migrants live in rented housing, although overcrowding and informality are common. Access to education is another major challenge for this population. As reported by *El País América* (2024), despite Colombia's favorable legal framework regarding the right to education, migrant children still face barriers such as xenophobia, as highlighted in research conducted by Universidad del Rosario and Pontificia Universidad Javeriana. However, access to health care and social security remains one of the most urgent and essential needs of the migrant population in Colombia. This is due to the physical and psychological impacts of displacement mostly forced—that do not end upon arrival in the host country but often persist and worsen due to precarious living conditions. Although Colombia's social security system was created more than three decades ago, it still shows significant coverage limitations. This situation has become more evident with the steady increase in migratory flows over the past decade, which has tested its capacity for response and adaptability to new migratory dynamics.

For a migrant to belong to the social security system in Colombia, it is necessary to have a regularized residence status in the country and to register either as a dependent worker, contributing jointly with an employer, or independently, making full contributions. However, irregular status prevents access to the social security system in the first place. In this regard, Constitutional Court ruling T-210/18 established that emergency medical services must be provided to Venezuelan nationals with humanitarian needs, even if they are in an irregular situation. These have been some of the steps taken by the country to protect the needs of this population.

It is therefore necessary to identify the main needs of the migrant population in Colombia in order to design programs, public policies, regulations, and judicial decisions that guarantee the

protection of these individuals, who in many cases may be considered under the category of refugees.

The Treatment of Social Security for Migrants in Irregular Situations in Selected Countries

For the MERCOSUR Institute of Public Policies on Human Rights, migration can be understood as the movement from the territory of one State to the territory of another State or within the same State. Therefore, in this section we focus on international migration, which entails crossing borders between two countries, so as to refer specifically to migrants in an irregular situation who are present on a temporary, transitory, or definite basis in a given State.

Migration has been considered a right whereby people may move freely—here, between States—allowing them the freedom to settle in a State different from their State of origin. This is grounded in Article 13 of the Universal Declaration of Human Rights, which provides: “1. Everyone has the right to freedom of movement and residence within the borders of each State. 2. Everyone has the right to leave any country, including his own, and to return to his country.” But then, what happens to those who enter a country irregularly and whose administrative status is uncertain, preventing them from obtaining even basic protection for their fundamental rights?

According to Pérez [7], “the irregular situation of an immigrant in a given State leads to a greater violation of his or her fundamental rights if, in the country of destination, they do not have the proper authorization to work or to remain there” (p. 4).

In this scenario, the Inter-American Court of Human Rights has held that “a person’s immigration status cannot, under any circumstances, serve as a justification for depriving them of the enjoyment and exercise of their human rights, including labor-related rights” (IACtHR, 2003). In line with this, it is the States that must adopt legislative measures to eliminate barriers so that migrants in irregular situations can access and protect their fundamental rights.

The notable increase in the migrant population especially among those in an irregular migratory situation—demands a critical review of its legal treatment, particularly with regard to labor and social security in different States. In this regard, the Inter-American Court of Human Rights, in its Advisory Opinion OC-18/03, categorically established that: “The State has the obligation to respect and guarantee the labor human rights of all workers, regardless of whether they are nationals or foreigners” (IACtHR, 2003).

What follows are examples of how certain States regulate labor and social security protections for migrants:

United States of America: In the realm of social security, the United States operates under a liberal court/system framework that results in inequities in health, since the ability to pay becomes the most important factor and eligibility criterion, followed by citizenship. Although the country has programs for the poor and vulnerable, this status is not sufficient to qualify as a beneficiary of the U.S. social security system, as one must have a Social Security number, which ultimately excludes many undocumented migrants and/or those in an irregular situation.

The differential treatment the United States applies to its citizens and regular migrants, as compared to migrants in an irregular situation, is supported by federal regulations, with an important antecedent in the Immigration and Nationality Act (INA) a statute that even deems inadmissible the entry of persons who may become a public charge.

This discrimination became even more pronounced starting in 2020, when the world faced a severe health crisis and the United States approved federal stimulus measures to counteract the effects of COVID-19 through laws covering financial aid, food assistance, and medical care initiatives from which migrants in irregular situations were also excluded as beneficiaries.

Argentina: Argentina's Senate and Chamber of Deputies approved the Argentine Migration Policy under Law No. 25.871 (National Congress of Argentina, 2003). This statute sets out the country's regulatory regime regarding the rights and obligations of foreigners, the powers of the State, the admission of foreigners to the Argentine Republic and its exceptions, the entry and exit of persons, and the legality or illegality of residence. It provides that the State must ensure conditions that guarantee effective equal treatment so that foreigners can enjoy their rights and fulfill their obligations, provided they meet the conditions established for entry and residence under current laws.

This provision mandates the Argentine State and its entities to "ensure equal access for immigrants and their families under the same conditions of protection, support, and rights enjoyed by nationals, in particular with respect to social services, public goods, health, education, justice, work, employment, and social security," highlighting an essential aspect for closing inequality gaps. Article 8 further provides that "under no circumstances shall access to the right to health, social assistance, or health care be denied or restricted to any foreigner who requires it, regardless of their migratory status." Thus, Argentina provides health services free of charge to migrants in irregular situations.

Brazil: Brazil guarantees to immigrants and refugees who settle in the country, in addition to labor-related social rights, access to education, food, leisure, housing, health, and transportation, and grants them security and social welfare, including protection of motherhood and childhood and assistance to those in need.

Decree-Law No. 5.452, known as the Consolidation of Labor Laws (CLT), has formed the basis of Brazilian labor law since 1943 [8]. Over successive periods and amendments, it has guaranteed equality of rights and decent working conditions for all workers, regardless of nationality.

In Brazil's case, medications required by irregular migrants are even provided free of charge, and medical services are provided without distinction to citizens, regular migrants, and irregular migrants alike.

Spain: Spain is one of the countries whose 1978 Constitution recognizes a series of rights for foreigners working in Spain. Therefore, if a foreigner enters Spanish territory and engages in work activity, they will be covered by the Social Security system.

According to Rubio (n.d.), “the rights of foreigners in matters of Social Security are set out in art. 10.1 of the LOEx, which provides that resident foreigners have the right to engage in remunerated activity, whether self-employed or employed, as well as to access the Social Security system, in accordance with current legislation” (p. 243).

Guarantees for Access to Social Security in Colombia

Colombia has not been immune to the migratory phenomenon, especially since 2013, as a result of the economic and social crisis in Venezuela. Due to its ease of access by land, Colombia has become a transit point toward other territories in Latin America.

Globally, it has been observed that a significant proportion of people who decide to settle in a country different from their place of origin do so out of an urgent need to improve their quality of life. This decision is usually motivated by conditions of vulnerability stemming from political, economic, or religious contexts, or from forced displacement due to internal or international armed conflicts.

Colombia has been characterized by its policy of solidarity and institutional efforts aimed at meeting the basic needs of the migrant population, especially regarding access to the right to health. This commitment is framed within the principles adopted by the member states of the United Nations, which recognize health as a fundamental human right.

According to this approach, the provision of health services must be guaranteed not only to the national population but also to those within the territory as migrants or refugees, regardless of their migratory status.

In Colombia, the General System of Social Security in Health is structured into two regimes: the Contributory Regime, directed toward individuals with the financial capacity to fund their membership through contributions, and the Subsidized Regime, aimed at those who lack sufficient resources and who receive state-funded coverage through the National Government.

Regarding affiliation with the social security system, which provides protection against risks arising from work, disability, old age, or death, there are two types of enrollment: dependent, through an employer, and independent, directly by the contributor, depending on the type and nature of the activities performed.

However, the main challenge faced by the Venezuelan migrant population stems from the lack of regularization or legal status allowing them to remain in the territory and access the benefits granted by law not only in terms of health but also in the protection of other fundamental rights such as the rights to work, housing, and education, all protected under the Political Constitution of Colombia.

To safeguard all the rights involved in the migratory phenomenon, the National Government, through the Ministry of Foreign Affairs, has implemented strategies to maintain control and promote the social, labor, cultural, and family integration of the migrant population by creating special permits to facilitate their stay and engagement in economic activities.

Forms of Regularization

1. Special Stay Permit (PEP): Implemented through Resolution 5797 of July 25, 2017, this permit was granted to Venezuelan nationals for a period of two years to engage in activities in Colombia, provided certain conditions were met, such as entering the country through a migration checkpoint before June 7, 2018. Later, the benefits were extended to those registered in the Administrative Registry of Venezuelan Migrants, regardless of how they entered the country, as well as to members of the armed forces and police who arrived before 2019, and individuals who applied for refugee status between 2015 and 2018.

2. Special Stay Permit for the Promotion of Formalization: Established by Decree 117 of 2020, this permit was granted to Venezuelan citizens in an irregular migratory situation who had a job offer through an employment contract or a service agreement. Its main benefit was access to the Comprehensive Social Security System. The duration of this permit depended on the length of the contract, which could not be less than two months or more than two years, with the possibility of renewal or early cancellation by the employer, who was required to report any changes in the worker's activity, occupation, or contract type.

3. Temporary Protection Statute for Venezuelan Migrants (ETPMV): Issued under Decree 216 of 2021, this statute, titled "By which the Temporary Protection Statute for Venezuelan Migrants under the Temporary Protection Regime is adopted and other provisions on migration are enacted," aimed to register and identify Venezuelan migrants and grant them the Temporary Protection Permit (PPT), allowing them to work and access the Comprehensive Social Security System.

Under Colombia's migration policy, the Temporary Protection Statute (ETP) for Venezuelan migrants—which provides for the granting of the PPT—is currently not in an active registration phase. The first stage, corresponding to the Single Registry of Venezuelan Migrants (RUMV), concluded on May 30, 2023, for most of the migrant population. However, an exception allows Venezuelan children and adolescents to register until May 30, 2031, provided they meet the requirements established by current regulations.

Jurisprudential Protection

In Colombia, as in several other countries, jurisprudence provides protection for citizens' rights. In the case under study, rulings such as T-760 of 2008 established the fundamental right to access necessary health services, regardless of migratory status.

Ruling T-449 of 2021 reaffirmed international legal frameworks that safeguard migrants' rights and emphasized the protection of women, particularly those facing additional difficulties due to unwanted pregnancies or economic burdens as the sole heads of household.

Ruling SU-543 of 2023 determined that the Temporary Protection Permit (PPT) allows Venezuelan migrants to access the social security system in health and pensions.

Taken together, these rulings show that the Constitutional Court has extended the protection of fundamental rights to migrants in irregular situations, recognizing them as subjects of special

protection due to their exposure to various forms of vulnerability such as discrimination, violence, and labor exploitation especially women who face additional challenges related to unwanted pregnancies or financial dependency.

Proposed Solution

According to the findings of this study, the protection of the human rights of the migrant population particularly access to social security depends largely on two closely related factors: (1) facilitating the process of regularization for individuals coming from other countries and (2) implementing policies to promote labor inclusion regardless of migratory status.

First, it is proposed to eliminate all barriers to accessing special stay permits, as these are currently limited by entry dates, specific conditions, third-party requirements (such as employer sponsorship), and prior registration demands, which hinder the social integration of migrants and the protection of their fundamental rights.

Second, it is essential to guarantee equal access to the labor market, ensuring that migrants enjoy the same conditions, protections, and rights as Colombian nationals, regardless of their legal status. This would help maintain economic stability and contribute to personal, family, and social development through public policies that ensure the protection of the rights of migrants in irregular situations.

Discussion

The present analysis shows that access to social security for migrants in irregular situations, although legally supported in some States, remains limited and unequal, as certain governments make decisions without considering the international obligations they have undertaken to safeguard the rights of this population.

Although Colombia has made legal and jurisprudential progress recognizing a set of rights such as access to healthcare and social security there is still no comprehensive fulfillment that includes preventive health, pensions, and other social security guarantees. This situation undermines the human dignity of the migrant population and contradicts international norms ratified by Colombia.

This analysis confirms that the legal framework does not fully correspond to international human rights commitments, such as those established in Advisory Opinion No. 18 of the Inter-American Court of Human Rights. Comparing previous studies from universities such as Universidad del Rosario and Universidad Javeriana, together with the pronouncements of higher courts, it becomes evident that material protection remains insufficient in certain cases affecting the migrant population.

The findings have implications that suggest the design of inclusive public policies with minimum health standards, as well as measures that facilitate access to the labor market in order to regularize contributions to the health, pension, and occupational risk systems. This would ensure a dignified life for migrants in the country and help reduce inequality.

Conclusion

This study concludes that there is a normative disparity among States regarding access to social security for migrants in irregular situations. This situation largely stems from the autonomy of each State in defining social services, leading to inequities and limited humanitarian assistance that violate basic human rights.

The findings of the legal, doctrinal, and jurisprudential analysis confirm that, despite progress in some countries particularly in Colombia there is still a need to expand timely and unrestricted access to comprehensive social security, especially in the areas of health, pensions, and occupational risks.

In response to the issue raised, it is concluded that there is no uniform guarantee of social rights for migrants in irregular situations, which compromises their basic rights, including access to healthcare and other aspects of social security.

Therefore, the main contribution of this study lies in its proposal for the adoption of comprehensive public policies that remove barriers to migration regularization and ensure equal access to the labor market, allowing migrants to contribute to and benefit from the system while meeting their basic needs.

Finally, it is proposed that interstate cooperation and the articulation of public policies aimed at the social protection of irregular migrants would not only promote the effective enjoyment of fundamental rights but also contribute to social stability and the development of more just and cohesive societies.

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