

4. In transit: migration policy in Colombia

Beatriz Eugenia Sánchez Mojica

Colombian migration policy is currently undergoing a process of profound transformation. Despite the fact that, at least since the second half of the 20th century, Colombia has been a country of emigration, such population movements have been subject to only minimal regulation. At the same time, immigration policy has traditionally been underpinned by national security concerns, evidenced by the fact that, until 2011, the body responsible for controlling movements into and out of the country, and for maintaining information on foreign nationals, was the former Departamento Administrativo de Seguridad (Administrative Department of Security – DAS) – an agency with responsibilities that included intelligence and espionage.

Until the beginning of the 21st century, the combination of Colombia's regulatory framework with factors such as a decades-long internal armed conflict, the oversupply of labour, successive economic crises, and the absence of an effective internal communications infrastructure led to a panorama characterised by population expulsion and extreme difficulty in attracting immigrants.

Today, however, that panorama is changing. The Colombian government is seeking to open itself up to immigration and build links with its citizens living abroad. This transformation responds primarily to an increased interest in implementing an economic model in which foreign investment and the extractive industries are central. According to this model, immigration is an asset for development and growth, the expectation being that it brings highly qualified workers to the country as well as leading academics and researchers and, above all, investors who will inject capital into the extractive sector, which lies at the heart of the economic model. Consequently, a process has been underway since 2009 to build institutional and regulatory frameworks intended to attract qualified immigrants plus investment, and to build links with those who have acquired knowledge, capital or connections of potential value to the process of national development after having left the country. Respect for migrants' rights is critical if this approach is to be successful, and therefore the primary focus on issues of national security has been mitigated.

The migration policy born of these changes is the first in the history of the nation that covers both immigration and emigration. The policy is framed according to the recommendations found in Conpes Document 3603 of 2009¹ and the requirements of Law no. 1465 of 2011. Both these instruments apply the language of human rights and emphasise Colombians living abroad should participate in decision-making on matters concerning them. Under the new regime, national security concerns – although present – are no longer the governing priority. The question therefore remaining, of whether Colombia's new approach is rights-based, is addressed by this chapter at a time when proposals are still incomplete and any conclusions drawn might thus be premature or speculative. Nevertheless, an analysis of the steps taken hitherto makes it reasonable to posit that, while migrants' rights are an important aspect of the new approach, respect for them is secondary to its real purpose – that of attracting people and resources considered valuable to the development model adopted by the government.

The actions thus far have focused on facilitating investors and qualified workers to enter and remain in the country, and to establish links with Colombians residing abroad. Sectors with knowledge, skills or resources that might contribute to Colombia's economic growth are the priority. However, energy has still not been invested in developing a migrants' statute that recognises their rights, or mechanisms to ensure they may enjoy them fully, without fear of discrimination. Similarly, mechanisms are yet to be put in place to ensure that emigrants can indeed participate in decision-making on matters that affect them.

The first section of this chapter presents Columbia's current migration panorama, summarising the history of population flows to and from the country. Section two describes the state's different historic responses to these movements before outlining current migration policy. Although the policy has a solid framework, it is still in the process of being implemented, which is the focus of the next section. The final section evaluates the reform process of Colombia's migration system.

Colombian immigration and emigration in figures

Studying migration in Colombia is challenging, mainly due to the scarcity of up-to-date and reliable data that would allow estimates of immigrant and migrant numbers to be made, or for a profile of their social and demographic

1 Conpes, *Política Integral Migratoria*. Conpes Documents (Documentos Conpes in Spanish) are public policy instruments produced by El Consejo Nacional de Política Económica y Social (National Economic and Social Policy Council – Conpes). They develop general guidelines for the formulation, implementation and monitoring of areas of state action, and define legal responsibilities. As they are not binding, it is commonly the case that they are not implemented.

nature to be developed.² This notwithstanding, it is important to recognise that the authorities are aware of this problem and have been making efforts to bridge the gap in recent years. Of particular importance was the creation in 2011 of the agency generally referred to as Migración Colombia, which is responsible for controlling and overseeing population flows into and out of the country (see third section).³

In spite of these positive developments, accurate consolidated data is still not available on the number of foreigners living in the country or of Colombians resident abroad, because the system only includes information from December 2011 and even this data has yet to be consolidated. This section therefore uses a wide range of sources to construct a panorama of the current migration situation. Most important of these is the information gleaned from the 2005 census carried out by the Departamento Nacional de Estadística (National Statistical Department – DANE) and the post-census study it produced in 2008. To a lesser degree this section also relies on the information system developed by Migración Colombia, the DANE's survey on remittances and information provided by the International Organization for Migration (IOM) and the World Bank.

Migration towards Colombia

Following independence in 1819, Colombia, like other countries in the region, developed policies intended to attract migrants, particularly those of European origin. It was hoped they would settle in the low-lying lands, modernise production methods, fill gaps in the labour market, promote economic development and contribute to racial mixing in order to 'improve the race'.⁴ Although these policies remained in place until the mid 20th century, in contrast with Venezuela, Brazil and Argentina, Colombia failed to emerge as an attractive destination for migrants. Not only was it subject to constant crises, it had an excess supply of labour as well as suffering from numerous civil wars and a poor communications infrastructure. Another factor was the Catholic church's intense campaign to impede non-Catholic immigration.⁵

Throughout the 19th and 20th centuries only small groups of migrants came to the country, and they tended to settle in specific areas and form distinct communities. For example, immigrants from present-day Syria,

2 The IOM profiles, based on official data, face the same obstacle. The last decades of the 20th century and the early years of the new millennium only cover a small proportion of Colombian migratory flows.

3 The Unidad Administrativa Especial Migración Colombia was created by Presidential Decree no. 4062, 31 Oct. 2011.

4 Mejía Ochoa, *Diseño y Formulación Operativa de una Política Integral de Gestión Migratoria Laboral*, p. 5.

5 Malagón, 'Radicalismo e inmigración'.

Lebanon and Palestine arrived in the decades following the 1880s and settled principally along the Caribbean coast (particularly the city of Barranquilla) and the Magdalena river. In the early decades of the 20th century, immigrants arrived from Japan and settled in the west, especially the departments of Cauca and Valle del Cauca. The next influx comprised Europeans in small numbers, fleeing the wars and persecutions unleashed in their countries of origin. These included: Polish Jews, Spanish Republicans and Italian anti-Fascists who settled down in the main cities including Bogotá and Cali.⁶

With the passage of time Colombia seems to have become increasingly less attractive as a destination for migrants. At the end of the 1930s immigrants accounted for 0.63 per cent of the population (54,418), a figure that had fallen to 0.39 per cent (82,848) by 1973 and to 0.28 per cent (78,396) by 1985. The downward tendency continued into the early years of the 21st century. The 2005 census revealed that foreigners made up only 0.26 per cent of the resident population.⁷ Despite these statistics, the perception of the authorities and of the general population is that immigration has increased significantly in recent years. Contributory factors to this perception are the stabilisation of the internal armed conflict and the adoption of an economic model that emphasises attracting foreign investment. Equally important is that, notwithstanding the world economic and financial crisis, the Colombian economy has been growing since the beginning of the century.⁸

The perception also reflects the growing presence of foreigners in the country, especially in tourist areas and the major cities. While this is a phenomenon that may be observed simply by strolling through Bogotá's financial district, or the streets of Cartagena de Indias, there are no official figures to corroborate it objectively. The only official statistics are those available from the information system maintained by Migración Colombia, indicating that in the 12 months from December 2011 the number of immigrants rose by 10.12 per cent while the number of emigrants dropped by 8.55 per cent.⁹ Although these figures cover too short a period to confirm the perception, and do not provide any on the number of foreigners currently residing in the country (flow data and not stock data are provided), they do reflect a change in the trend of migration flows towards the country.

6 Cárdenas and Mejía, 'Migraciones internacionales en Colombia', p. 27.

7 Martín et al., 'Políticas públicas sobre migración en Colombia', p. 284.

8 The Colombian economy has been expanding since the beginning of the 21st century, albeit with fluctuations. Thus, between 2005 and 2007 GNP increased, respectively, at 4.7%, 6.7% and 6.9%. In contrast, growth in 2008 and 2009 was limited to 3.5% and 1.7%. Since 2009, though, growth has resumed, the economy expanding by 4.7% in 2010, 5.9% in 2011 and 4.0% in 2012, despite the global economic crisis. See DANE, *Boletín de Prensa No. 12*.

9 Migración Colombia, *Boletín Migratorio, Diciembre de 2012*, p. 10.

The absence of official data on immigration to Colombia also makes it difficult to determine with certainty the place of origin of the foreigners living in the country or their reasons for migrating. The 2005 census suggests three principal countries of origin: Venezuela, the United States and Ecuador. Not only do these countries share frontiers and easy communication with Colombia, but they also form part of well-established human mobility networks. The census also indicates that 63 per cent of immigrants came from Latin America – Peru, Argentina, Mexico and Brazil, but principally from Venezuela and Ecuador – while 14.13 per cent came from Europe and 14.44 per cent from the US or Canada.¹⁰ Migración Colombia's data for 2012 does not provide new information on the origins of the migrant population.¹¹

According to the census data, the majority (51.7 per cent) of resident foreigners in 2005 were male and 61 per cent were aged between 15 and 64.¹² Most immigrants have settled in five areas of the country: Bogotá, Valle del Cauca, Antioquia, Norte de Santander and Atlántico, where the principal centres of foreign investment and production are concentrated. In addition, Bogotá, as the country's capital, is host to most diplomatic missions and to the head offices of multinational companies.¹³

Taken together, these figures provide a rough profile of the immigrant population in Colombia. They tend to be individual migrants who have left their own country to pursue specific work or professional activities. No data is available on their levels of education or their motivation for coming to Colombia, so no further analysis can be made. Their small numbers explain the historical absence of an immigration policy.

Emigration from Colombia

Traditionally – and especially since the middle of the 20th century – Colombia has been a country of emigration. During that period three major waves of population movement out of the country took place. The first occurred between 1965–75 with the principal receiving countries being Venezuela, the United States, Ecuador and Panama. This emigration flow was initially made up of poorly educated rural workers who were attracted by the economic booms occurring in Colombia's neighbouring countries. Other contributory factors towards the decision to emigrate included the crisis affecting Colombia's agricultural sector and the violence of the ongoing internal armed conflict. In the early 1970s the typical emigrant profile changed. Reforms to the US immigration system were decisive in convincing young professionals to seek a

10 Martín et al., 'Políticas públicas sobre migración en Colombia', p. 287.

11 Migración Colombia, *Boletín Migratorio, Diciembre de 2012*, p. 9.

12 Ibid.

13 IOM, *Perfil Migratorio de Colombia, 2010*, p. 42.

better life. Other similarly qualified individuals went to the United Kingdom to fill gaps in the service and hospitality sectors.¹⁴

The second wave of emigration occurred during the 1980s. Venezuela's petrol boom coming to an end led potential migrants to identify other destinations on the basis of purely economic criteria. During this period the drugs trade played an important role in the patterns of emigration since it was a rapidly expanding 'business' that required people to distribute and sell the product in the principal consumer countries.¹⁵

The third and final wave happened between 1995–2000. Outflows during this period reached an unprecedented peak and responded to a range of domestic factors. The country was undergoing a severe economic, political and social crisis coupled with the intensification of the internal armed conflict. The result was an increase in levels of violence and a generalised sense of insecurity.¹⁶ The growth in the number of emigrants decelerated somewhat after 2002, but has remained high. During this time the number of target countries for Colombians expanded. A more restrictive US migration policy obliged emigrants to travel to countries as diverse as Canada, Spain, France, the United Kingdom, Italy, Australia, Germany, Mexico, Costa Rica, Argentina, Chile and the Dominican Republic. In Asia, Japan became an important recipient country, particularly for female emigrants.¹⁷

Despite Colombia having been a country of emigration throughout its recent history, the authorities have largely ignored this fact. Consequently, not only was there a complete failure to develop policies to protect Colombian citizens living abroad, but nothing was done to establish an information system which would track their numbers and profiles. This lack of action only began to change in 2005 when two questions designed to gather migration data were included in the census. The answers obtained showed that in 2005 3,331,107 Colombians were living abroad – that is, some 8 per cent of the overall population.

However, the data was incomplete, because the framing of the questions meant it was not possible to gather information on all household members that had left Colombia. In order to improve the quality of these statistics a post-census study was produced in 2008, intended to complement the census figures with entry and exit data gathered by the DAS. Using this and other information subsequently gathered by Migración Colombia, the Foreign

14 Cárdenas and Mejía, 'Migraciones internacionales en Colombia', pp. 5–6.

15 Ibid., p. 93.

16 Ayala et al., 'Un acercamiento al actual éxodo Colombiano al exterior', p. 92.

17 IOM, *Perfil Migratorio de Colombia, 2010*, p. 29.

Ministry estimates that some 4.7 million Colombians (just over 10 per cent of the population) are currently living abroad.¹⁸

Some (but by no means all) characteristics of the emigrant population can be identified from the census data and the subsequent study. Three destination countries accounted for about three-quarters of emigrants, the census showing that 35.3 per cent went to the United States, 23.4 per cent to Spain and 18.5 per cent to Venezuela. The next most popular destinations were Ecuador (2.4 per cent), Canada (2.2 per cent) and Panama (1.3 per cent). The second important emigration feature, indicated in the 2008 post-census report, was that a majority (54 per cent) were women. Finally, of the overall population that left the country, 78 per cent were aged between 15 and 65, 20 per cent were under 15, and only 1.5 per cent over 65.

The motivations for emigration cannot be ascertained, however, either from the census or the report. Attempts were made to fill this gap using the 2009 National Survey of International Migrations and Remittances, according to which 85.7 per cent of those who left the country did so for economic reasons. Personal reasons, such as marriage or family reunification were the second most frequent reason for emigration, at 6.8 per cent, while the third, at 4.3 per cent, was educational and training opportunities. A wish to get to know the world occupied fifth place, at 2.2 per cent. Finally, the security situation was the least common motivation for emigration at only 1 per cent of cases.¹⁹

While these studies were accepted as authoritative by the IOM's 2010 report, they should be examined carefully because they were compiled solely on the basis of migrants who send remittances back to Colombia. Not only does this overlook emigrants who do not do so – because they lack the resources or interest – but also the significant numbers who have left the country as refugees. On this latter point, the United Nations Higher Commissioner for Refugees office (UNHCR) reported that, by December 2012, 391,100 Colombians had crossed international borders to seek protection. This figure includes 282,300 people who had entered Venezuela and Panama as refugees – even though they had not been officially recognised as such.²⁰ These statistics suggest that the ranking of the motivations for emigration from Colombia need to be amended.

The final piece of information required to complete the profile of Colombians who have left the country concerns their educational levels. Again, neither the 2005 census nor the 2008 post-census study enquired into this matter. Research supported by the World Bank indicates that Colombia is among the top 30 countries in the world in terms of its emigrant population's educational

18 Information taken from the Foreign Ministry's web page for the 'RedesColombia' programme at www.redescolombia.org/informaciondeintereses/caracterizacion/ (accessed 25 Nov. 2014).

19 IOM, *Perfil Migratorio de Colombia, 2010*, p. 54.

20 UNHCR, *Global Trends. Displacement. The New 21st Century Challenge*, p. 13.

attainment.²¹ This was corroborated in a Colombian study indicating that the country has lost 6 per cent of its human capital with graduate or postgraduate qualifications to the United States, while foreigners resident in Colombia with similar levels of education make up only 1 per cent of the population.²²

In summary, while these data do not permit a well-defined profile of Colombians who leave the country to be made, they do help construct an overall picture. Emigrants are generally of working age and have crossed international borders in search of a better life. Significant numbers have sought refuge from violence associated with the armed conflict. A small group of host countries have traditionally received Colombians, and these immigrants use social and cultural support networks.

State responses to migration in historical context

A brief history of Colombian migration policy

Despite the fact that migration, and in particular emigration, has been a constant in Colombia's history, it has attracted little official interest. Although a regulatory and institutional framework was established in the 19th century, its failure rapidly converted it into a dead letter.²³ Throughout the 20th century, measures were adopted to control migration, but it would be inaccurate to refer to them as forming a fully fledged policy, as they were isolated measures rather than amounting to a coherent and comprehensive plan of action. Immigration was regulated through a particularly stringent visa regime that imposed strict requirements on migrant workers wishing to establish themselves in the country, although the controls for investors and tourists were more relaxed.²⁴ Responsibility for controlling inward and outward flows was assigned to the DAS, which employed a national security focus in carrying out its responsibilities by focusing on the foreigners presumed to be a potential threat. In the area of emigration, the Consular Service was assigned basic responsibilities for the protection of Colombians residing abroad as late as 1993.²⁵

It was only in the 1990s that a proposal to develop a fully fledged migration policy was made. Conpes Document 2706 of 1994, inspired by the approach

21 Docquier and Markfouk, 'International migration by educational attainment (1990–2000)', p. 176.

22 Medina and Posso, 'Colombian and South American immigrants in the United States of America'.

23 Malagón, 'Radicalismo e inmigración'.

24 Many regulations covered procedures for visa application and granting, including the following decrees: 1000 (1986), 2000 (1987), 666 and 1546 (1992), 2241 (1993), 2408 (1999), 1384 (2002) and 2107 (2001).

25 Law no. 76, 1993.

to immigration developed by traditional receiving countries such as Australia and Canada, set out an action plan designed to attract highly educated migrants with available capital.²⁶ This represented an attempt to foment development by taking advantage of the capabilities, knowledge and resources of foreigners. However, the plan, which did not touch on the emigration question, was never implemented.

A comprehensive migration policy was not developed until the beginning of the 21st century, when two factors came together. The first was the increase of Colombian emigrants abroad. The magnitude of this phenomenon demanded a response from the authorities that hitherto had been left to the Consular Service, an inadequate response to a scenario in which Colombia was losing inhabitants – and consequently resources vital to its development – at a rate never experienced before. The second factor was linked to the first: the decision to adopt a development model that specifically linked migration to economic growth.

During the 1990s Colombia embarked on transforming its economic model, adopting legal reforms and fiscal incentives designed to create a neo-liberal system as demanded by international bodies.²⁷ Thus, the economy was deregulated, public services privatised, labour flexibility introduced and property rights strengthened.²⁸ These changes established the conditions that enabled President Álvaro Uribe (2002–10) to pursue his development plan, and for its continuation by his successor Juan Manuel Santos (since 2010).

The model, which was set out in the development plans presented by both presidents, had two strategic priorities.²⁹ The first was to privilege primary resource extraction, both agricultural and mineral. President Uribe's government focused on the promotion of large-scale African palm and sugar cane cultivation, dedicated to the production of bio-fuels. The Santos government has demoted these crops to a second plane, concentrating more on mining and oil.³⁰ The second was to attract foreign investment, envisioned as the source of finance for the extractive projects and the infrastructural improvements required to deliver the primary products to international markets. To do this Colombia has concentrated on negotiating and signing numerous agreements to protect

26 Martín et al., 'Políticas públicas sobre migración en Colombia', p. 330.

27 Edwards and Steiner, *La Revolución Incompleta*.

28 Lemaitre Ripoll (ed.) *Derechos Enterrados. Comunidades étnicas y Campesinas en Colombia*, p. 15.

29 National development plans form the basis of government policy prepared by the President of the Republic's government team to follow through on proposals presented during the electoral campaign.

30 Sánchez and Uruña, 'Derechos humanos, desplazamiento forzado y desarrollo económico en Colombia'.

foreign investment, some of which stand alone, while others are incorporated into free trade agreements.³¹

The model's successful implementation requires the adoption of measures designed to facilitate the entry and permanence of foreign investment, multinational companies and highly qualified professionals, as well as establishing links with Colombian residents abroad whose knowledge, professional skills and capital could contribute to the growth of the country.³² Consequently, it was important that the government develop a holistic migration policy focused equally on immigration and emigration.

The first steps towards creating this policy were taken in 2003 with Decree no. 1239, which created the Comisión Nacional Intersectorial de Migración (National Intersectoral Commission on Migration – CNIM). Made up of representatives from various governmental bodies, the Commission was given responsibility for coordinating the country's migration policy. A year later, Decree no. 4000 established a new visa regime, making it easier for investors and highly qualified professionals to enter the country. The Foreign Ministry created the 'Colombia nos Une' programme (Colombia Brings Us Together) in order to establish contact with Colombians resident abroad and prepare an assessment of their needs. This process was complemented in 2007 with the creation of a platform, 'RedEsColombia', to facilitate the operation of the programme.³³ In 2005, Law no. 991 extended consular service support for overseas residents. In 2006, another programme called 'Colombiano Seguro en el Exterior' (Colombians Safe Abroad) was created, bringing residents living abroad under the social security system.

These measures soon proved inadequate and it became necessary to extend and incorporate them into a truly integrated policy. In 2009 Conpes Document 3603 was published, establishing the framework aimed at bringing this about.

Conpes Document 3603: creating a national migration policy

Up to the beginning of the 21st century migration had been low on the list of the Colombian government's priorities and almost entirely reactive. The measures adopted from 2003 onwards increased state responsibility for foreign

31 As of Sep. 2013 free trade agreements had been signed with Mexico, Chile, the Mercosur, El Salvador, Guatemala, Honduras, the United States and Canada. One with the European Union is currently at ratification stage, and agreements are being negotiated with Turkey, Costa Rica, Panama and Israel. All include sections on foreign investment protection. Additionally, agreements for foreign investment protection have been finalised with Spain, Switzerland, Peru, China, India, the United Kingdom, Singapore and South Korea; similar ones are in the process of being negotiated with Japan and the EFTA countries.

32 DNP-Departamento Nacional de Planeación, *Plan Nacional de Desarrollo 2010–2014*, p. 124.

33 Foreign Ministry Resolution 3131 of 2004. The name, a gentle play on words, can be interpreted to mean both 'Colombia networks' and the 'the network is Colombia'.

investors travelling to the country and for Colombians resident abroad, but they were far from creating a coherent whole. Conpes Document 3603 was the first attempt to create a truly coherent policy to regulate immigration and emigration, respond to the demands of the newly adopted development model, and answer the needs of Colombian residents abroad.

The document's proposals were based on a diagnosis of the results of existing migration policies. The analysis was unusual in having been carried out in consultation with Colombian communities resident in New York, Madrid, Caracas, Quito and Miami, cities that, according to the 2005 census, constitute a significant percentage of the Colombian diaspora.³⁴ Perhaps for this reason the Conpes Document focused on authorities' inability to deal adequately with this group's needs and its consequent vulnerability. Immigration is a secondary concern of the document's analysis, being limited to indicating the need to intensify existing efforts to attract foreign investors, employees of multinational companies and highly qualified professionals.³⁵

Failings the document identified in the existing approach to migration are attributed to two principal causes. The first is the absence of an adequate institutional framework, specifically a reliable and up-to-date information system capable of tracking the numbers of people entering and leaving the country, and also their profiles and needs. Further evidence of the need for restructuring migration management came to light when the Consular Service was unable to provide adequate services for Colombians living abroad and when, six years after the National Intersectoral Commission on Migration had been established, it still failed to coordinate the bodies responsible for different aspects of migration.

The Conpes Document identified the inability to develop a unified vision of migration, acknowledging the variety of its expressions and its links to development, as the second reason for institutions' disappointing results in managing migration. The isolated actions carried out hitherto should therefore, it said, be reassessed so that migratory flows could contribute to the country's economic growth. The document argued that strategies should be developed to improve the living conditions of Colombians resident abroad, and to take advantage of the knowledge, skills and resources they have acquired in order to promote economic, academic and social progress in their home country. It also suggested that it was important to restructure the migration regime in order to make the country more attractive to foreign investors, professionals and other highly qualified individuals.

Building on this analysis, the document argued that there is a need for a migration policy that is fully consistent with the country's foreign policy

34 Conpes, 2009, p. 1.

35 *Ibid.*, pp. 27–52.

objectives, and built on a human rights focus according to which the protection of migrant rights is central to state activities. In the long term, the new policy should, according to the document, pursue four objectives:

1. To defend, protect and guarantee immigrant and emigrant rights.
2. To strengthen mechanisms for transferring skills to the country of Colombians living abroad who have high levels of social capital, and to maintain and increase training opportunities for Colombians living abroad and for foreigners resident in Colombia.
3. To guarantee the permanent availability of adequate and effective state services to Colombians living abroad and to foreigners in Colombia, adjusted to the changing dynamics of migration.
4. To commit to the establishment of standardised approaches to migration in accordance with international standards.³⁶

To achieve these objectives the document outlined a broad action plan requiring existing institutional and regulatory frameworks to be revised. In particular, it suggested the adoption of measures to establish contact with Colombians living abroad, encourage their participation in decision-making on matters affecting them, and guarantee their welfare in areas as varied as entry to the labour market, access to education and social security coverage. The document proposed mechanisms for the recognition of foreign university qualifications to encourage professionals to return to Colombia and contribute to the country's development. It argued for the development of a strategy to use remittances productively and to reform the visa regime to make it easier for family members to accompany investors and temporary workers entering the country. Finally, the document proposed improving existing strategies to prevent and combat people smuggling and human trafficking as a strategy to improve migrant safety.

The Colombian migratory regime: a policy under construction

This ambitious plan to reformulate migration policy has only been partially implemented. As the Conpes Document was non-binding, legislation was required if its recommendations were to be put into force. Ideally, Congress would have passed a single piece of legislation enshrining at least its basic elements in law and establishing the financial resources to ensure its implementation. But this has not occurred. Certain aspects of the action plan have been adopted through a multitude of regulations and programmes, while others remain outstanding, meaning that Colombia's migration policy may be viewed as remaining under construction.

³⁶ Conpes, 2009, p. 53.

The next section deals with the process of transformation the regulatory framework and institutions are currently undergoing. For ease of reference, both sub-sections begin with a description of the situation prior to the 2009 Conpes Document followed by a summary of the changes to the regulations and institutions subsequently introduced.

Transformations in the institutional framework

Traditionally, the Foreign Ministry was primarily responsible for migration policy; formulating, implementing and monitoring immigration and emigration measures. In the past, the limited importance of migration within the national policy framework meant that the Ministry only had the support of the DAS in carrying out these tasks. The DAS was responsible for controlling movements into and out of the country and registering, documenting and maintaining surveillance over foreigners. However, as migration acquired greater importance for the state, the number of institutions with responsibilities in the area grew. For example, the Ministry of Education took on the task of encouraging the process of easing the recognition of the qualifications of foreigners, the Housing Ministry assumed responsibility for acquiring and improving homes, and the Ministry of Social Protection began to develop instruments to enable immigrants and Colombians resident abroad to benefit from the social security system.

Responsibility for coordinating these functions lay with the National Intersectoral Commission on Migration created in 2003³⁷ with the ambitious aim of identifying the needs of the Colombian population abroad and the desired pattern of immigration in order to propose guidelines for establishing and coordinating a holistic immigration policy. Despite this remit, the role it has played can only be characterised as negligible.

Reforming this coordination system was the first measure towards strengthening the legal framework. Law no. 1465 of 2011 increased the mechanism's compass by creating the Sistema Nacional de Migraciones (National Migration System). Conceived of as a broad network of public bodies and civil society organisations, this system is intended to support the government, and in particular the Foreign Ministry, in the design and implementation of migration policy. As well as strengthening the Commission,

37 Its members are the Ministers of the Interior, Justice, Foreign Relations, Defense, Social Protection, Trade, Industry and Tourism; the Departamento Nacional de Planeación and representatives of the Instituto Colombiano de Crédito Educativo y Estudios Técnicos en el Exterior (Colombian Institute for Educational Credit and Technical Studies Abroad); the Instituto Colombiano para el Fomento de la Educación Superior (Colombian Institute for the Promotion of Superior Education) and the Foreign Ministry's Dirección de Asuntos Consulares y Comunidades Colombianas en el Exterior (Division of Consular Affairs and Colombian Communities Abroad).

the new mechanism is also meant to establish conditions permitting the emigrant population to participate in decision-making on matters affecting it.

The initiative has, however, been a failure because the normative framework has significant gaps that mean the system is unable to perform the functions for which it was set up. First and foremost the law does not define clearly how the system is to be created, limiting itself to the simple statement that it will be made up of the National Intersectoral Commission on Migration and 'all the state and government bodies whose functions and objectives directly concern migration and immigration in Colombia'.³⁸ Such vague wording makes it impossible to identify with any precision the other bodies that should participate in the system.

The second obstacle was that, while a Mesa Nacional de la Sociedad Civil para las Migraciones (National Civil Society Round Table for Migration) was created to ensure participation of the migrant population in policy design, no guidance at all was provided on how it should be established, operate or be financed. The text of the law was limited to mentioning its name and stating that it should be represented on the Intersectoral Commission on Migration. In similarly abstract terms, the law indicated that the government should create additional participation spaces for Colombians living abroad, but without specifying how.³⁹ It is important to note here that in both cases the participation of Colombians resident abroad was sought. The resident foreign population in Colombia was not included

Functions assigned to the system correspond in part to the proposals for improving the migration system made in Conpes Document 3603. Thus, its responsibilities include identifying the needs and interests of Colombians living abroad, strengthening the channels of communication between the authorities and the emigrant population and improving services. Furthermore, it is charged with increasing coherence between migration policy and national, regional and local development plans as well as identifying ways of bringing about immigrants' social integration.⁴⁰

These functions are to be carried out according to the guiding principles established by the law, which reflect those suggested in the Conpes Document, as follows: respect for the integral human rights of migrants and migrant families; the search for international cooperation mechanisms; and the creation of an ordered regime to guarantee freedom of movement that views migrants as contributors to national, regional and international development.⁴¹ Nevertheless, the law allocates no resources to governmental and other bodies

38 Law no. 1465/2011, Art. 5.

39 *Ibid.*, Art. 7.

40 *Ibid.*, Art. 4.

41 *Ibid.*, Art. 3.

charged with putting the policy in place. This lack of funding is the third obstacle to the effective implementation of the system.

In the normal course of events a regulatory decree would have been issued to clarify the structures – such as the National Civil Society Round Table for Migration – that are inherent to the system and to the participation of the emigrant community. However, at the time of publication no decree has been issued.

In contrast to this first failed attempt to transform the institutional framework, the second reform has proved not just successful but decisive in shaping national migration policy. This involved replacing the DAS in 2011 with Migración Colombia as the body responsible for controlling and supervising migratory flows.⁴² This change has required the authorities to make a full declaration of principle concerning their vision of migration policy. The DAS was one of the most powerful and controversial of Colombia's institutions. Responsible for Colombia's intelligence operations, it ran the country's espionage and counter-espionage activities. Following several scandals involving corruption and human rights violations, the government ordered it to be dismantled, sharing its functions out between several new entities.⁴³

The creation of Migración Colombia signalled an important transformation in how the question of migration is perceived and managed. The new body, which included sufficient resources and specialised personnel was presented as an indispensable instrument for the development of a modern and transparent migration policy centred on respect for migrants' rights. To the functions of control and supervision developed by its predecessor were added those of designing and managing an information system to register inflows and outflows from the country that would make up-to-date and accurate data available to decision-makers.

It is important to recognise that the new body is seriously committed to representing the migration policy's new focus. Since February 2012 it has published a monthly statistical bulletin of population movements into and out of the country.⁴⁴ The procedures for obtaining identification documents have also been simplified for foreigners, and an ambitious plan has been developed to create a system of support for migrants known as Centros Facilitadores de Servicios Migratorios (Migrant Support Centers). These centres, of which 27 have been opened so far across the country,⁴⁵ provide information to the public on migration issues and constitute an important step towards making

42 Decree no. 4062/2011.

43 Decree no. 4057/2011.

44 www.migracioncolombia.gov.co/index.php/banco-de-documentos/boletines-migratorios.html (accessed 25 Nov. 2014).

45 Migración Colombia, *Informe de Gestión, 2012*, p. 50.

the country more attractive to immigrants through easier registration and application procedures for identification documents.

Migración Colombia's greatest challenge has probably been tackling its employees' change in mentality. Most come from the old DAS whose approach to immigration was formed within a national security culture.⁴⁶ Senior management, aware of this problem, has dedicated time and resources to staff training in the form of courses and workshops emphasising human rights and customer service.⁴⁷ It is, however, likely it will take a long time for a culture suspicious of migrants as a potential threat to be replaced by one which sees them as bearers of rights and contributors to development.

Transformation of the regulatory framework

Traditionally, Colombia regulated immigration by presidential decree, which comes directly from the president's office without involving Congress.⁴⁸ Regulations established the requirements and conditions that foreigners had to meet in order to remain in the country, as well as the sanctions that would be applied if they broke the rules. This approach did not recognise foreigners' rights, being limited to establishing procedures and conditions for granting, extending and cancelling visas and residence permits.

Following the publication of Conpes Document 3603 in 2009, one might expect that, in order to guarantee immigrants' rights, there would be a statutory response recognising their rights and establishing mechanisms to ease their integration. However, this has not been the case. Immigration procedures are governed by Decree no. 834 of 2013, which adheres to tradition inasmuch as it is limited to establishing the regulations covering visas, residence and work permits, conditions of stay in the country, migration authority procedures for monitoring foreigner visitors and residents, and the sanctions regime.

The decree does not, in other words, provide the expected measures to guarantee migrants' rights. At first sight, the new regulations seem to constitute a further step in simplifying the visa regime initiated some years earlier and to facilitate entry into the country for investors and employees of multinationals, especially those from states with which Colombia has signed free trade agreements or treaties to protect foreign investment.⁴⁹ However, if one examines its contents more closely, the introduction of one important change to the migration regime can be detected.

46 Ibid., p. 10.

47 Ibid., p. 30.

48 Until Law no. 1465/2011 was passed immigration regulation was an area of exclusive interest to the national government meaning that no democratic debate has taken place around this issue.

49 Decree no. 834/2013, Art. 6.

This norm abandons the planned labour immigration regime, contained in former Decree no. 4000 of 2004, whereby foreigners were granted entry according to whether they met the 'social, demographic, economic, scientific, cultural, security, public order, health or other interests of the Colombian state'.⁵⁰ Thus, it granted special entry permits to individuals with knowledge, skills or resources who could contribute to the country's development. In addition, restricted entry was imposed on those who might take employment away from Colombian nationals or cause economic, political or social problems.⁵¹ Decree no. 834 of 2013 eliminated these limitations, establishing instead a regime that was open to foreign workers.

This decree was preceded by a reform to the law regulating labour relations in Colombia. In order to protect national employment, Articles 74 and 75 of the Código Sustantivo del Trabajo (Substantive Labor Code) established limits on how many foreigners could be contracted by businesses based in the country. The law specified that no more than 10 per cent of employees could be foreign, rising to 20 per cent if non-nationals were needed to carry out technical or specialised activities. Any variation to these limits required special temporary permission to be granted by the Ministry of Labor. This requirement was removed in December 2010 by Article 65 of Law no. 1429.

Taken together, this legislation and the modification of the new immigration statute constituted a reform of the framework covering labour migration, as it radically adjusted the conditions applicable to foreigners joining the labour market. However, it did not mark the culmination of a process of reflection and discussion. Despite the law reforming the Substantive Labor Code having been approved by Congress, it was not intended to open up the employment market but to create measures to generate employment and improve labour conditions. Consequently, the elimination of the limits on contracting foreigners went largely unnoticed.

The simplification of the procedures governing entry to the country should not be confused with a relaxation of controls. On the contrary, the new decree increased the requirements of employers, academic institutions and other organisations in which foreigners play a role to inform Migración Colombia of their activities.⁵² It also added questions about sovereignty and national security to the application process thus making it more complicated for foreigners to gain entry.⁵³ Migración Colombia has the authority to make these decisions, against which there is no right of appeal.⁵⁴ It is also responsible,

50 Decree no. 4000/2004, Art. 3.

51 Ibid., Art. 4.

52 Decree no. 834/2013, section IV.

53 Ibid., Art. 28.

54 Ibid., Art. 29.

under the terms of Law no. 1465 which grants it ample discretionary powers, for administering deportation and expulsion. Despite these changes, the right-based approach proved to be absent from the immigration regulation once again.

Throughout Colombia's history, emigration has received even less attention than immigration. Consequently, up to the early 21st century the regulatory framework was limited to coordinating the Consular Service and defining the assistance that could be offered to Colombians resident abroad. Laws 76 of 1993 and 991 of 2005, required consulates to employ specialised staff to provide legal and social advice and support in cities abroad where more than 10,000 Colombians lived. They were required to promote human rights, especially in relation to due process, and to offer advice and support to people detained or discriminated against in the workplace. They were also required to trace missing citizens and defend the interests of minors and of people living with disabilities. A fund was created by the Foreign Affairs Minister to enable the Consular Service to carry out these activities.⁵⁵

These initiatives were strengthened at the start of the 21st century, with several ministries and government bodies adopting measures to offer services and opportunities to improve living standards of Colombians resident abroad. For example, the Foreign Ministry and the Social Security Institute created the *Colombiano Seguro en el Exterior* (Colombian Security Abroad) programme, enabling Colombians resident abroad to sign up and make pension contributions. The Foreign Ministry also developed a campaign involving mobile exhibitions in different consulates in order to encourage the use of remittances to buy homes in Colombia. For its part, the Ministry of Education, working with the *Servicio Nacional de Aprendizaje* (SENA) (the body responsible for technical education), designed online training programmes and developed systems for the recognition of foreign qualifications. The Foreign Ministry also promoted three further initiatives to establish communication channels between national authorities and foreign-based communities. Two of these – ‘Colombia nos Une’ and the ‘RedEsColombia’ platform – have already been mentioned. The third was a strategy known as ‘Plan Comunidad Exterior’ (Community Abroad Plan) through which consular staff collaborated in strengthening communities abroad and their organisations. The expectation was that the dialogue established through these initiatives would allow information to be gathered concerning emigrants’ needs and appropriate responses to be developed.⁵⁶

It is important to point out that, despite their diversity, these new initiatives had a common denominator. None of them recognised or guaranteed

⁵⁵ Law no. 76/1993, Art. 3 and Art. 4.

⁵⁶ Conpes, 2009, pp. 9–16.

migrants' rights but were confined to facilitating access to public goods or services. The Colombian state only acted as a guarantor of rights by offering consular assistance.⁵⁷ In all other cases it acted as a service-provider. The absence of a rights-based approach in emigration rules was clear inasmuch as – and as for foreigners resident in Colombia – no legal instrument existed to define the rights the authorities were required to guarantee.

The publication of Conpes Document 3603 has not changed this situation. At the time of publication no new provisions have been made to increase services offered other than the return programme established by Law no. 1565 of 2012, detailed below. The transformation of diaspora policy has only been of a formal nature: the programmes and initiatives previously offered by different institutions on a more or less autonomous basis are now provided through the programme 'Colombia nos Une'.

Three further aims have been added to the original one of establishing links with Colombians resident abroad: to link the emigrant population to programmes offering services; to promote structured migration; and to support return processes.⁵⁸ The first two have been developed, respectively, by the Plan Comunidad Exterior and the Sistema de Servicios (Service System), which incorporate all the service-provision programmes described earlier. The third and fourth objectives merit a more detailed explanation.

Colombia has signed a small number of bilateral treaties establishing systems for managing a well-ordered process of labour migration. For example, in 2000 it signed a bilateral accord with Ecuador⁵⁹ and a year later a similar agreement with Spain.⁶⁰ Colombia is also a member of the Andean Community of Nations which has approved several regulations in the field.⁶¹ The third objective of 'Colombia nos Une' is to manage and monitor these agreements. In relation to the bilateral accords, it provides support to ensure that the programmes are implemented and their results published. In the

57 As part of due process, foreigners have the right to receive consular assistance if imprisoned. This has been recognised by the International Court of Justice in its sentence on the case *Mexico v. United States of America*, formally known as *Avena and Other Mexican Nationals*. Decision dated 31 March 2004.

58 For information on the 'Colombia nos Une' programme see www.redescolombia.org (accessed 25 Nov. 2014).

59 'Estatuto Migratorio Permanente, Entre Colombia y Ecuador' (Permanent Migration Statute between Colombia and Ecuador), signed in Bogotá, 24 Aug. 2000.

60 Agreement between Spain and Colombia 'relativo a la regulación y ordenación de los flujos migratorios laborales' (on the regulation and planning of labour migration), signed in Madrid, 21 May 2001.

61 Decision 544 of the Andean Community of Nations' 'Instrumento Andino de Migraciones Laborales' (Andean Labor Migration Instrument)

field of people trafficking, it is responsible for publicising official prevention programmes.⁶²

The fourth and final objective is implemented through a programme established to support people who have returned to the country, either voluntarily or as deportees. This initiative centres on the provision of assistance to vulnerable individuals who have returned to the country, and of employment advice to all returnees. This modest programme is currently being modified in the light of Law no. 1565 of 2012, which establishes a new and ambitious return programme that goes beyond the welfare vision previously operated. It seeks to encourage the return of Colombians who have acquired knowledge, capital or connections that could be valuable for the process of national development. It is also intended to facilitate the return of people who left the country as a result of the armed conflict, in recognition of their status as victims and their right to restitution.⁶³ Attention is also paid to vulnerable deportees. This complex plan has received government approval with the implementation of two new decrees which put its provisions into practice.⁶⁴

Conclusion: an evaluation of Colombian migration policy

Migration is now a critical issue for Colombia. The disproportionate increase in emigration, with the resulting loss of human capital and the adoption of a development model that requires the injection of significant financial and human resources, have resulted in the authorities understanding the need to develop an integrated public policy to regulate migration movements and benefit the country. Consequently, a process has begun to construct a complex normative and institutional architecture capable of managing migratory flows.

Still in development, this process has been guided by two premises. The first – the protection of migrants – is a permanent component of official discourse. The second is the conception of migrants as a key factor in the country's development. While a reading of the plans, programmes and regulations that constitute public policy would suggest this second element is subordinate to

62 The Ministry of the Interior, in cooperation with the IOM, has, under the terms of the agreement, created a national free telephone line for victims. Similarly, the Foreign Ministry has also signed up with the IOM to cooperate technically and financially to create a programme providing assistance to trafficking victims to assist them in returning to their place of origin, where they will receive protection, accommodation, medical, psychological and material assistance, legal advice and information on rights and procedures. Furthermore, Migración Colombia is currently developing multilateral alliances to combat this crime.

63 This kind of return is covered by the Victims and Land Restitution Law (no. 1448, 2011).

64 Ministry of External Relations, Decree no. 1000, 2013; President of the Republic, Decree no. 2064, 2013.

the first, analysing the concrete actions that have been carried out leads to a different conclusion.

Firstly, Colombia has established the foundations of a national migration system: for the first time it is in a position to develop an internationally and regionally coordinated approach which respects the rights of the migrant population. However, the regulations provide no more than a sketchy outline of the structure, leaving the government with the task of turning it into concrete action – a task it has not fully initiated. The institutional framework has only been partially implemented and the coordination it foresees between institutions, and with the migrant population, has not been initiated.

Secondly, the creation of Migración Colombia has represented a definitive step in overcoming the national security focus that had dominated immigration policy hitherto. The new body has emerged as a technical entity responsible for controlling and monitoring migratory flows. Its principal achievement in the short period it has been in existence has been the implementation of an up-to-date and reliable information system on the movement of migrants into and out of the country. It has also developed new systems to register and confirm the legal status of foreigners resident in the country, simplifying procedures and reducing waiting times.

The third action is the radical overhaul of the immigration regime. The limits previously imposed on foreign worker entry in order to protect domestic employment have been eliminated. Furthermore, the new regime facilitates the entry of investors and employees of multinationals.

The emigration regime has also been transformed. Service provision for Colombians resident abroad has been centralised in the 'Colombia nos Une' programme and the other programmes designed to establish and maintain contact between communities abroad and the government have been strengthened.

The migration regime that is emerging as a result of these intensive changes seeks to identify the migrant population as an important factor in the country's development model. It is not, however, a regime that guarantees protection. Despite the official discourse and the principles included in the laws and decrees that constitute the system, the major gap in development is the absence of a rights-based approach. No statutory basis has been established to confer rights on the migrant population, specify guarantees or ensure they are able to participate in decision-making. While there have been advances in ensuring they are treated with respect and are required to jump through fewer bureaucratic hoops, the framework focuses more on the government's interest in ensuring migrants contribute to the country's growth than on recognising them as bearers of rights.

The construction of a migration policy in Colombia is not yet over. Like the traveller who stops over between his or her place of origin and the final destination, it is in transit. Perhaps the authorities will adjust their path and integrate a rights-based approach as they have promised. Only time will tell.

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