

Symbolic refugee protection: why Latin America passed progressive refugee laws never meant to use

From free legal assistance in Nicaragua to the recognition of the right to refuge for people fleeing environmental disasters in Ecuador, Latin American refugee laws are exceptional. Yet they often seem to represent more of a utopian manifesto than the basis for political action, as [Omar Hammoud Gallego](#) (LSE) and [Luisa Feline Freier](#) (Universidad del Pacífico, Peru) found.

Lee este artículo [en español](#)

Latin American countries tend to have very good laws on the books. Indeed, sometimes, as in the case of refugee protection, such legislation is not only detailed but also extraordinarily progressive. In theory, refugees enjoy a wide variety of social and economic rights, ranging from free legal assistance in Nicaragua to the recognition of the right to refuge for people fleeing environmental disasters in Ecuador. The trouble is that most of these laws are hardly ever applied in practice. Despite most countries in the region nominally returning to democracy in the late 1980s, the rule of law, that is, the equal application of the law to everyone all of the time, has [lagged behind](#).

How can we explain this dilemma?

There are at least two possible scenarios. On the one hand, liberal legislation is passed with good intentions but cannot be properly implemented because of low state capacity. Or on the other, legislation is passed symbolically, with the intention of window dressing, that is, pretending that something is being done about a certain issue, with little thought about how or whether to implement the law in practice.

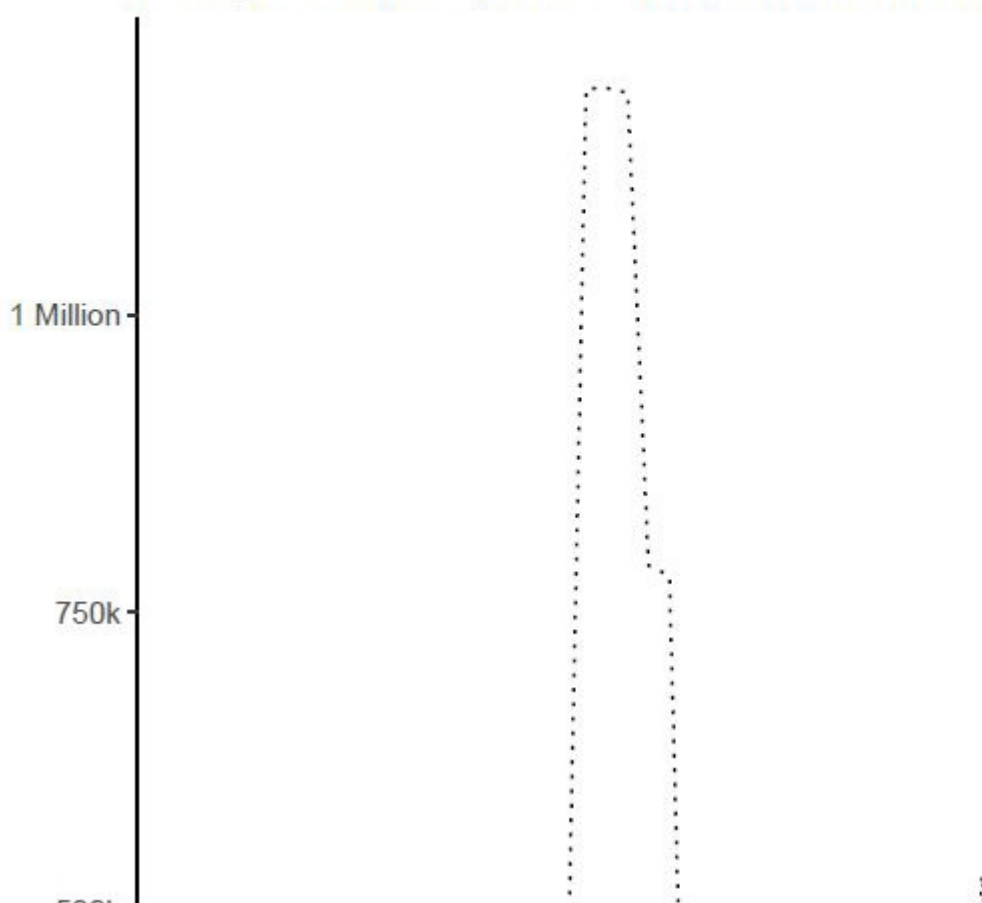
In a recently [published academic article in the *American Political Science Review*](#), we argue that refugee legislation in Latin America represents the latter case. We study how refugee policies in 19 Latin American countries developed over a 30 years period based on data from the [APLA dataset](#) and explore the factors that explain the adoption of very

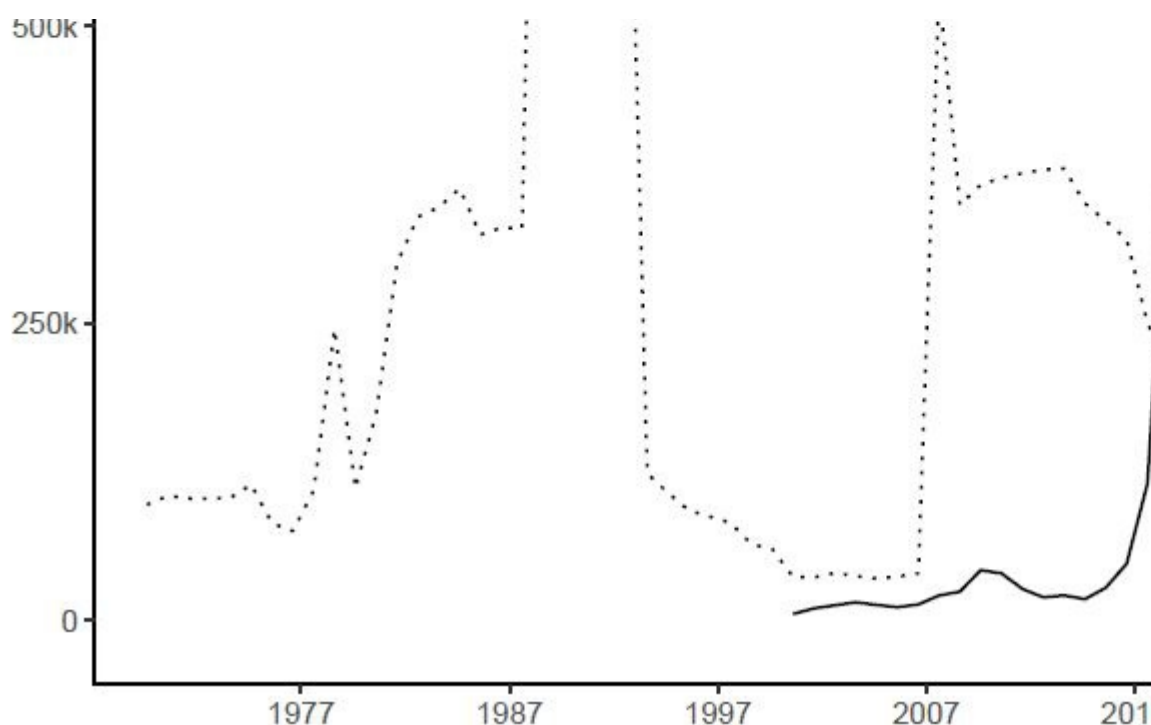
progressive legislation in most of these countries.

Based on mixed methods (econometric and in-depth qualitative case analyses) – we find that the leftist ideological convergence of governments in the region and their increased political and economic integration led to the adoption of similar standards for refugee protection. This policy development took place in a context in which migration and especially refugee protection were non-salient issues in political debates.

We argue that – especially in the early 2000s – governments in Latin America wanted to morally position themselves against restrictive policies in other world regions while also trying to showcase their commitment to migrants' rights, which were embedded in political narratives on human rights more broadly. Tellingly, before the beginning of the Venezuelan displacement crisis, very few countries in the region hosted significant migrant and refugee populations, with Ecuador and Venezuela being the only countries with a considerable number of them, overwhelmingly from Colombia.

Refugees and Asylum Seekers in Latin America, 1970





Source: Hammoud-Gallego and Freier 2022

What are the consequences of progressive refugee legislation in Latin America largely being symbolic?

Given that legislative refugee protection was largely symbolic, states across the region are reluctant to invest in their asylum systems, leading to low state capacity that hinders the application of the law.

Take for example the recent [mass displacement of over six million Venezuelans](#). They are leaving an authoritarian regime that has economically annihilated what was once one of the wealthiest countries in South America. Already in 2018, the UN Refugee Agency (UNHCR), the Inter-American Human Rights Commission and various [legal scholars](#) asserted that most Venezuelans fit the regional refugee definition adopted in most countries' legislation in the region and should therefore be recognised as such.

Such description, also known as the '[Cartagena Refugee Definition](#)', identifies as refugees all those "who have fled their country because their lives, safety and freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed the public order". This definition clearly fits the Venezuelan context.

And yet, so far – with the exceptions of Brazil and Mexico, which host considerably smaller numbers of Venezuelans in relation to larger host populations than other host countries – very few Venezuelans have been recognised as refugees across the region. Instead, governments across Latin America have opted for ad-hoc migratory permits to grant them residence, leaving millions in situations of irregularity.

Table 1: Official Estimates of Venezuelan Mig
February 2022. Data for Colombia from Marcl
Migracioncolombia.gov.co

Country	Residence Permits	Asylum Seekers	F F
Chile	160,700	4,700	2
Colombia	2,440,126	28,800	1
Ecuador	202,500	4,300	7
Peru	362,800	531,800	4
Argentina	345,500	5,600	3
Brazil	294,900	85,700	4
Uruguay	20,100	2,100	4

Source: R4V.info

Low state capacity and bureaucratic backlogs partly explain these extremely low recognition rates. For example, Costa Rica has only four asylum officers who are confronted with the impossible task of resolving thousands of asylum applications and are currently scheduling refugee status determination interviews for 2032. The fact that executives do not adequately provide funding to their refugee departments despite the region's current displacement crisis and in many cases, rely on the help of UNHCR to function speaks not only to the real challenge of sustainably financing refugee protection in the Global South. It also reveals the symbolic character of laws they never meant to enforce, which likely applies to other contexts beyond asylum.

What, then is the point of progressive refugee legislation in the region if it's not being applied?

Even though implementation gaps between law and policy are widespread, the law matters. As forced displacement will continue to be a main issue across the region for years to come, the slow-wound but broadly functioning judicial systems will lead to a greater application of laws through strategic litigation, as well as advocacy work by NGOs and international organisations in many countries.

Latin America's refugee laws are exceptional, yet they often seem to represent more of a utopian manifesto than the basis for political action. The region has the chance to become a global leader and an example in refugee protection. A firm and committed application of its refugee law would foster the region's international standing and help generate the international cooperation needed to make the legal utopia of refugee protection a reality.

Notes:

- The views expressed here are of the authors rather than the Centre or the LSE
- The research article on which this piece is based is titled: HAMMOUD-GALLEGO, OMAR, and LUISA FELINE FREIER. "[Symbolic Refugee Protection: Explaining Latin America's Liberal Refugee Laws.](#)" *American Political Science Review*, 2022, 1–20.
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