

Human Rights Protection and Migration: Strategies in Tension under a Framework of Regulation, Security and Order. A Comparative Analysis of Chile and Argentina in a Global Context

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Abstract: This article analyses transformations in migration governance in Argentina and Chile between 2015 and 2025, focusing on access to regular status as a central dimension. Despite their historically divergent normative frameworks -one more rights-oriented (Argentina) and the other more security-based (Chile)-, this paper argues that both countries have converged towards increasingly restrictive and discretionary forms of regulation. The analysis shows that legal reforms, administrative practices and digitalisation processes have introduced new barriers to regularisation, producing fragmented and unstable forms of legal status. In both cases, irregularity emerges not as a failure of the system but as an outcome of its design and implementation. The article argues that migration governance in the region is shifting towards models that manage, rather than resolve, migrant precarity, reinforcing the role of economic and labour requirements as key criteria for access and permanence.

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A. Introduction

Over the past two decades, Latin America has become a region characterised by intense mobility of both intra- and extra-continental migrants within and towards the American

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continent, following a pattern of south-to-north transit towards North America. This process has been driven by persistent economic, political and social factors, including inequality, precarity, violence, transformations in the global labour market, limited access to social protection systems, the expansion of criminal governance, climate change and geopolitical tensions.

This phenomenon has intensified since 2015, particularly in a context shaped by the large-scale Venezuelan and Colombian migration waves, the effects of the COVID-19 pandemic, and policies of pressure and externalisation of migration control promoted by the United States.¹ It reflects a broader global trend of increasing forced and non-forced migration, which has reconfigured the conditions under which States in the region regulate mobility, placing existing legal frameworks under strain and giving rise to new forms of migration governance.²

In the Southern Cone, and up to the period under study, Argentina and Chile consolidated their position as key destination countries. Over the past decade, both countries experienced sustained growth in regional and extra-regional migrant populations, including flows from Venezuela, Colombia, Haiti, China, Senegal and the Dominican Republic.³ These processes are embedded in divergent institutional trajectories, legal cultures, and geopolitical alignments and integration projects. In this context, Argentina adopted, in 2003, a migration law aligned with a national human rights agenda and a regional integration strategy through MERCOSUR member and associate states.⁴ Chile, by contrast, maintained since 1975 a selective model of migration management, based on more restrictive admission criteria and administrative filtering of foreign nationals.⁵

- 1 *Sofía López Franco*, Moving Beyond Externalization in the US-Mexico Relationship, Policy Paper El Colegio de México (COLMEX) and the Center for Immigration Law and Policy (CILP) at the UCLA School of Law (2026), p. 4: In migration context externalization refers to “measures undertaken by destination countries to shift migration management processes from a country’s interior or physical border to instead take place partly or entirely outside of a country’s territorial boundaries”, that might set out in formal or informal or ad hoc agreements between countries.
- 2 *López Franco*, note 1, p. 4.; *Luciana Gandini*, Keeping in transit: flexible externalization and the dual logics of transit governance in the Americas, *Frontiers in Human Dynamics* 7 (2026).
- 3 *Brenda Matossian / Ana Melisa Pardo Montaño*, Migración, normativas y desigualdades en América Latina: análisis comparativo Argentina y México, *Geograficando* 21 (2025).
- 4 Both countries are framed within the Residence Agreement for Nationals of the States Parties of the Southern Common Market (MERCOSUR), together with Brazil, Paraguay, Uruguay, Venezuela and Bolivia. This agreement seeks to promote, as core pillars of integration, the principles of democracy and economic development, alongside a range of arrangements in the areas of migration, labour, culture and social policy. It also aims to incorporate the dimensions of social citizenship and productive integration, which has led to the need to expand institutional frameworks across the region in response to emerging demands, including more effective forms of civic participation.
- 5 *Lorena Oyarzún Serrano / Gilberto Aranda / Nicolás Gissi*, Migración internacional y política migratoria en Chile: tensiones entre la soberanía estatal y las ciudadanía emergentes, *Colombia Internacional* 106 (2021), p. 89.

Despite these divergences, between 2015 and 2025 both countries introduced legal, executive and administrative reforms, as well as management practices and criteria which, together with the stringent migration restrictions adopted in response to the COVID-19 health emergency, shifted towards greater control over entry and stay and imposed restrictions on access to rights and social protection for non-nationals. In this context, migration policies implemented by governments of different political orientations increasingly came to be structured around logics of control, order and the management of flows, even within normative frameworks formally grounded in rights, contributing—albeit to varying degrees—to the production of irregularity.

Based on an analysis of the transformations introduced in both countries during the period 2015–2025, this article argues that, despite their divergent institutional trajectories, Chile and Argentina have converged over the past decade towards forms of migration governance which, under public discourses of both human rights and order, have contributed, explicitly or implicitly, to the production of irregularity and to the deepening of precarious living conditions among migrant populations. This convergence does not necessarily take the form of comprehensive legal reforms or normative homogeneity, but rather the progressive adoption of legal and administrative mechanisms that are shifting, discretionary and lacking transparency. These developments reconfigure the boundaries of migration legality, effectively restricting access to regular status⁶ and social protection in ways that are often unpredictable and difficult to navigate for migrants already residing in these countries, as well as for those seeking to do so.

B. Conceptual Framework and Research Problem

For much of the twentieth century, migration studies and migration policy analysis were dominated by state-centred approaches.⁷ Within this perspective, migration governance was understood primarily as the control of the entry and stay of foreign nationals. Contemporary scholarship has expanded this view by recognising that migration policy also involves decisions concerning belonging, integration and access to rights.⁸ In this sense, migration governance is conceived as a process in which legal frameworks, public policies and

6 A legal-administrative condition through which a foreign national may obtain a residence permit or authorised stay recognised by the State of residence, as a result of regularisation policies and programmes. At the normative level, this is grounded in the right to migrate, the non-criminalisation of irregular status, and a human rights-based approach, although it coexists with logics of control and securitisation.

7 *Andreas Wimmer / Nina Glick Schiller*, Methodological nationalism and beyond: nation-state building, migration and the social sciences, *Global Networks* 2 (2002), p. 301.

8 *Marcia Vera Espinoza et al.*, Towards a typology of social protection for migrants and refugees in Latin America during the COVID-19 pandemic, *Comparative Migration Studies* 9 (2021), p. 52.

everyday practices intersect, involving multiple actors across different levels of decision-making.⁹

Within this framework, the study of access to legal pathways for migration¹⁰ constitutes a central axis for understanding migrants' trajectories and processes of integration. Legal pathways refer to the set of legal instruments and administrative procedures that enable individuals to move, enter and remain in a country on a regular basis, regardless of whether their initial entry was regular.¹¹ Migration scholarship has shown that their existence and conditions of access not only define migrants' legal status. Access to regular status and lawful stay also structures their possibilities for integration, effective access to rights and participation in social life.¹²

However, the global increase in mobility has been accompanied by the proliferation of legal instruments that do not ensure straightforward or linear transitions to permanent residence and/or the acquisition of nationality.¹³ Recent scholarship shows that experiences of migration legality are increasingly fragmented, unstable and reversible, and that the likelihood of falling into irregular status is growing.¹⁴

- 9 Antoine Pécoud / Hélène Thiollet, *Research Handbook on the Institutions of Global Migration Governance*, Cheltenham 2023; Andrew Geddes, *Governing migration beyond the state: Europe, North America, South America, and Southeast Asia in a global context*, Oxford 2021.
- 10 Ana Paula Penchaszadeh, *De papeles y derechos: La difícil traducción del paradigma de derechos humanos en la política migratoria de la Argentina actual*, *Colombia Internacional* 106 (2021); Diego Acosta / Luisa Feline Freier, *Expanding the Reflexive Turn in Migration Studies: Refugee Protection, Regularization, and Naturalization in Latin America*, *Journal of Immigrant & Refugee Studies* 21(2023).
- 11 United Nations Network on Migration, *Vías regulares para la admisión y la estancia de migrantes en situación de vulnerabilidad*, Nota de Orientación, 2021: they include a range of legal instruments and arrangements, from visa waivers and the issuance of visas to different forms of temporary or permanent regularisation processes.
- 12 Deisy Del Real, *Gradations of Migrant Legality: The Impact of States' Legal Structures and Bureaucracies on Immigrant Legalization and Livelihoods*, *International Migration Review* (2024); Martha Luz Rojas Wiesner, *La irregularización de migrantes en el sur de México*, *Más Poder Local* 62 (2025), p. 32; Cecilia Menjivar / Daniel Kanstroom (eds.), *Constructing immigrant "illegality": Critiques, experiences, and responses*, Cambridge 2014; Martin Ruhs / Philip Martin, *Numbers vs. Rights: Trade-Offs and Guest Worker Programs*, *International Migration Review* 42 (2008).
- 13 Ibrahim Awad / Usha Natarajan, *Migration Myths and the Global South*, *The Cairo Review of Global Affairs* 30 (2018); Fiona Adamson / Gerasimos Tsourapas, *The Migration State in the Global South: Nationalizing, Developmental, and Neoliberal Models of Migration Management*, *International Migration Review* 54 (2020), p. 853; Andrew Selee / María Jesús Mora / Ariel G. Ruiz Soto, *El cambio de patrones y políticas migratorias en las Américas*, Migration Policy Institute, 11 April 2023, <https://www.migrationpolicy.org/article/el-cambio-de-los-patrones-y-politicas-migratorias-en-las-americas> (last accessed on 6 May 2026); Marie McAuliffe / Linda Adhiambo Oucho (eds.), *Informe sobre las migraciones en el mundo 2024*, Organización Internacional para las Migraciones (OIM), <https://publications.iom.int/books/informe-sobre-las-migraciones-en-el-mundo-2024> (last accessed on 6 May 2026).
- 14 Awad / Natarajan, note 15; McAuliffe / Oucho, note 15. Rojas Wiesner, note 14.

This set of processes has been analysed through concepts that problematise the relationship between migration, legality and irregularity, emphasising that migration irregularity does not depend on the actions of migrants alone, but is produced by legal frameworks and the practices of multiple actors, particularly—though not exclusively—national States.¹⁵ From this perspective, the acquisition, loss and recovery of regular status are mediated not only by legislation enacted by Congress¹⁶ and executive regulations, but also by policies, administrative procedures and practices, interpretative criteria and institutional dynamics.¹⁷

Within this framework, scholars such as Cecilia Menjívar, Martha Rojas Wiesner and Tania Basok have developed notions such as *liminal legality*¹⁸ and *precarious legality*¹⁹ to account for the experiences of individuals who are neither fully nor permanently documented nor undocumented, but who, as a result of legal frameworks, migration policies and their implementation, inhabit forms of legality that are temporary, conditional and unstable. These forms of fragmented regularity are sustained through administrative mechanisms—often temporary—that require periodic renewal, compliance with changing requirements and the payment of costs that may be prohibitive, generating relationships of dependence on local bureaucracies.

In Latin America, the study of legal pathways is of particular relevance, as their accessibility mediates -albeit in different ways- access to rights and social protection. On the one hand, in many countries the recognition of rights is directly linked to migration status, as in the case of Chile. It is also relevant in countries that have incorporated human rights principles into their legal frameworks, including access to rights irrespective of migration status, as in Argentina. This is so insofar as formal expansion has not necessarily translated into effective access, given the persistence of administrative, institutional and social barriers that continue to condition their exercise.²⁰

From a perspective that situates these experiences within a global regime of migration governance, this literature has also shown that formally rights-based legal frameworks have continued to centre control and regularity within migration policy. Rather than eliminating gaps in access to rights for migrants in irregular status, some countries—such as Argenti-

15 Martha Luz Rojas Wiesner / Tanya Basok, “Legalidad ilegal” y precariedad: la perspectiva desde el sur de México, *Sociologías* 55 (2020), p. 74. Nicholas P. De Genova, Migrant ‘illegality’ and deportability in everyday life, *Annual Review of Anthropology* 31 (2002), p. 419.

16 Kelly Bauer, Extending and restricting the right to regularisation: lessons from South America, *Journal of Ethnic and Migration Studies* (2019).

17 Cecilia Menjívar, Liminal legality: Salvadoran and Guatemalan immigrants' lives in the United States, *American journal of sociology* 111 (2006); *Del Real*, note 14.; Anna Tuckett, Rules, papers, status, Stanford 2018.

18 Menjívar, note 19.

19 Martha Luz Rojas Wiesner / Tanya Basok, “Legalidad ilegal” y precariedad: la perspectiva desde el sur de México, *Sociologías* 55 (2020).

20 Acosta / Freier; note 12; Leilo Mármora, Modelos de gobernabilidad migratoria: La perspectiva política en América del Sur, *Revista Interdisciplinar da Mobilidade Humana* 18 (2010).

na—have focused on large-scale regularisation programmes, thereby reinforcing regular status as the primary mechanism mediating access to rights and integration.²¹ In this sense, the human rights approach—materialised in access to rights beyond migration status— and the logic of security can converge within the same normative framework.²²

This observation shifts the analytical focus towards the ways in which these logics are articulated within legal frameworks, migration policies, interpretative criteria and administrative practices, as well as how they operate in practice and shape migration trajectories, access to rights and integration into host societies.

In recent years, several countries in Latin America, including Argentina and Chile, have introduced reforms that make regular entry and residence, the renewal of permits, transitions to permanent residence, and access to rights and social protection more difficult. These changes initially took place through shifts in administrative policies and practices and were subsequently consolidated through various legal instruments.

In this context, the article seeks to analyse how two countries with divergent legal and institutional trajectories can converge towards similar forms of migration regulation. In particular, it examines the mechanisms through which policies formally grounded in human rights principles and those shaped by security-oriented logics contribute—through partial legal and administrative reforms and institutional practices—to the production of irregularity and to the restriction of effective access to rights. The comparison is organised around shared analytical dimensions (security/control, mechanisms of production and management of irregularity, and the use of human rights language), which allow for a comparative analysis beyond differences in normative trajectories.

C. This Study and Its Methodological Strategy

Argentina and Chile were selected based on: (a) their relevance as destination countries within South-South mobility in the Southern Cone, and (b) the contrast between their underlying regulatory frameworks. While Argentina has had, since 2003, a Migration Law that incorporates—at least nominally—a human rights-based language, Chile maintained until 2021 a regulatory framework inherited from the dictatorship, with a strong security-oriented approach. The period 2015–2025 allows for the examination of the increasing

- 21 *Eduardo Domenech*, “Las migraciones son como el agua”: Hacia la instauración de políticas de “control con rostro humano”. La gobernabilidad migratoria en la Argentina, *Polis. Revista Latinoamericana* 12 (2013); *Marta Fernández y Patallo*, *Los Os direitos (dos outros) humanos: Migrantes, activistas e política migratória en Argentina*, Universidade Federal Fluminense, Tesis para optar por el título de Doctora en Antropología, 2016.
- 22 *Corina Courtis / María Inés Pacecca*, *Migración y derechos humanos: una aproximación crítica al “nuevo paradigma” para el tratamiento de la cuestión migratoria en la Argentina*, *Revista Jurídica de Buenos Aires* (2007), p. 183; *Eduardo Domenech*, *La visión estatal sobre las migraciones en la Argentina reciente: De la retórica de la exclusión a la retórica de la inclusión*, in: *Eduardo Domenech* (ed.), *Migración y política: el Estado interrogado. Procesos actuales en Argentina y Sudamérica*, Córdoba 2009, p. 21.

adoption of measures aimed at control and the production and management of irregularity within a broader regional and global context of securitisation. This includes State responses to changes in the composition and volume of flows (e.g. Venezuelan migration), the COVID-19 pandemic, domestic political developments, and regional and international pressures.

Accordingly, this study adopts a comparative strategy between two cases with divergent legal and normative trajectories, with the aim of identifying convergences and divergences in forms of migration governance. The comparison is structured around a stable set of analytical guidelines. The comparative design examines transformations in migration governance between 2015 and 2025 across two interrelated levels: (1) the legal-normative and (2) the administrative-institutional. At the first level, the analysis focuses on legal reforms regulating access to regular status and, to a lesser extent, to social rights. At the second level, it examines procedures, bureaucratic practices and institutional arrangements that mediate the implementation of these norms and shape individuals' interactions with the State.

The analysis draws on: (a) normative documents (laws, decrees, regulations and administrative provisions), (b) public policy and institutional documents (circulars, guidelines and official communications), (c) reports and statistics produced by public bodies, and (d) empirical data generated through the authors' MA and doctoral research, which allow for the reconstruction of administrative practices and the effects of reforms.²³

The analysis distinguishes between explicit policies (legislative reforms, decrees, programmes and formal regularisation processes) and implicit policies (administrative practices, requirements, digitalisation, costs and control criteria which, without being formally restrictive, produce barriers or segmentation in access to regular status). Following this analytical distinction, the examination of the language of rights focuses on its use as (a) a normative and legitimising justification and (b) an operational criterion in the regulation of entry, stay and regularisation.

For ease of reading, the article is structured as follows: Section C presents the research problem, along with the theoretical and conceptual framework on migration governance, the tensions between human rights and security, and regularisation/irregularity. Section D situates the cases of Argentina and Chile in sociodemographic and normative-institutional terms, in order to establish the baseline conditions for the comparative analysis. Section E develops the comparative analysis of both countries. Two levels are examined in parallel: (1) the legal-normative (declared rights, admission/inadmissibility criteria, expulsion and

23 *Josefina Moya*, Gubernamentalidad migratoria en el Sur Global, una mirada en tiempos de COVID19: políticas públicas de protección social a población migrante en contexto COVID19, análisis desde una reconstrucción de las trayectorias de la gubernamentalidad migratoria de Chile y Argentina, Facultad Latinoamericana de Ciencias Sociales (FLACSO), pending defense; *Camila Fernández Mejide*, Entre trámites y papeles. Intervenciones por el derecho a la regularización de migrantes internacionales en la Ciudad de Buenos Aires (2017-2022), Universidad de Buenos Aires, 2024.

residence categories) and (2) the administrative-institutional (procedures, control mechanisms and effective access to regularisation). At each level, the comparison is organised around three cross-cutting dimensions: security/control, mechanisms for the production and management of irregularity, and the use of human rights language. This strategy allows the comparative argument to move beyond a nominal reading of “securitised Chile” versus “rights-based Argentina”.

Finally, Section F synthesises the comparative findings, discusses the tensions between regulation, security and rights in the period 2015–2025, and offers concluding reflections.

D. Cases of Analysis: Brief Sociodemographic Context and Normative Configuration of Migration Policy in Argentina and Chile

This section provides a brief description of the cases of Argentina and Chile in sociodemographic and normative-institutional terms, with the aim of situating the comparative analysis developed in the following section. It outlines the general characteristics of migration in both countries, as well as the structural features of their regulatory frameworks and migration policy trajectories prior to the period 2015–2025. This focus makes it possible to identify the starting points from which both States have regulated international migration, highlighting their differences: a model oriented, albeit with nuances, towards regularisation (Argentina), and another centred on control and administrative discretion (Chile).

I. Argentinian Case

Since the consolidation of the national State between the nineteenth and twentieth centuries, Argentina has been conceived as a country of immigration²⁴, with changes in the composition of migration flows and in the relative weight of the foreign-born population within the total population²⁵. Since the mid-twentieth century, a predominantly Latin American migration pattern has been consolidated²⁶, with a strong presence of individuals from countries in the region—such as Bolivia, Paraguay, Peru and Chile—and, more recently, from Venezuela and Colombia, alongside a smaller presence of extra-continental migrants, mainly from the Dominican Republic, Haiti, Senegal, other Sub-Saharan African countries and China.²⁷

24 Organización Internacional para las Migraciones, Informe Condiciones de vida de migrantes en la República Argentina: caracterización de la población migrante para el seguimiento del ODS N°1, 2019.

25 Matossian / Pardo Montaña, note 5, p. 7.

26 Ibid.

27 Gabriela Fernández / Carla Gerber, Migración y derechos humanos en el marco de la emergencia por COVID-19, in: Juan Pablo Bohoslavsky (ed.), COVID-19 y derechos humanos, la pandemia de la desigualdad, 2020.

According to the most recent national census, the number of foreign nationals in the country is just under two million, and between 2010 and 2022 the proportion of the foreign-born population remained at slightly above four per cent of the total population.²⁸

At the normative level, the regulation of international mobility in Argentina is structured by Migration Law No. 25.781 (hereinafter, Migration Law), enacted in 2003. This law, albeit belatedly, is grounded in the human rights framework established by the 1994 constitutional reform, which granted constitutional hierarchy to a set of international human rights treaties (Article 75(22)) and enshrined provisions on the equality of rights of non-nationals, substantive equality and affirmative action measures (Articles 16, 20 and 75(23)).²⁹

The new law introduced a substantial shift in the way migration was conceived by the State, moving from the expulsion-oriented regime of Law No. 22,439 -enacted during the last Argentine military dictatorship (1976–1983)- to a system of integration grounded in human rights³⁰ and in the regional integration agenda linked to the formation and consolidation of MERCOSUR, strongly promoted by Presidents Néstor Kirchner (2003–2007) and Cristina Fernández de Kirchner (2007–2015).³¹

In this vein, the normative framework incorporated the recognition of the right to migrate as a human right (Art. 4), as well as principles of non-discrimination and access to health, education, social security and justice, and participation in public life, irrespective of migration status (Articles 6, 7 and 8). At the same time, it introduced provisions that prioritised regularisation as a State response to the then high levels of irregularity³², and others aimed at reducing -though not eliminating- the margin of discretion previously granted to the migration administration in the issuance of visas and residence permits, as well as in the recognition of rights for persons in irregular status.

This was implemented in different ways. On the one hand, it decriminalised undocumented migration, which is now considered an administrative offence. In this regard, it

28 Portal oficial del Instituto Nacional de Estadísticas y Censos, <https://www.indec.gob.ar/> (last accessed on 6 May 2026).

29 *Mónica Pinto*, *Temas de Derechos Humanos*, Buenos Aires 2004; *Laura Clérico / Martín María Aldao*, *La adjudicación directa de DESCA por la Corte IDH.*, in: Armin von Bogdandy, Mariela Morales Antoniazzi (eds.), *Avances metodológicos, en Construcción de un ius commune del derecho al medio ambiente sano y la justicia climática*, 2023.

30 Decreto N° 836/2004; *Lila García*, *Práctica y discurso de los operadores judiciales en sus decisiones de control migratorio: el caso de la justicia administrativa federal en la ciudad de Buenos Aires*. *Estudios Socio-Jurídicos*, 18(1), 2016; *Barbara Hines*, *The Right to Migrate as a Human Right: The Current Argentine Immigration Law*, *Cornell International Law Journal* 43 (2011).

31 *Fernández / Patallo*, note 23.

32 Defensoría del Pueblo CABA, *Políticas de regularización migratoria y prácticas de las agencias estatales*, 2003; *Pablo Ceriani Cernadas*, *Nueva Ley: un paso hacia una concepción distinta de la migración*, in: Rubén Giustiniani (ed.), *Migración: un derecho humano*, Buenos Aires 2004, p. 113; At the time the Migration Law was enacted, a large proportion of this population was in an irregular situation. Ceriani notes that, at the time of the adoption of the new Migration Law, there were at least 750,000 migrants from MERCOSUR countries in an undocumented situation in Argentina.

established that when, in the course of a residence control, the National Directorate of Migration (DNM) identified that a person was in an irregular situation, it was required (*debía*) to instruct that person to regularise their status before ordering expulsion.

On the other hand, in line with the MERCOSUR Residence Agreement adopted in 2002³³, it facilitated access to regular status for the foreign population most present in Argentina -namely nationals of neighbouring countries- through the creation of a regularisation criterion based on nationality from a MERCOSUR member or associate State. It also simplified access to permanent residence, particularly for individuals with immediate family members holding Argentine nationality or permanent residence, as well as for MERCOSUR migrants³⁴.

Moreover, it incorporated family reunification and humanitarian grounds as categories enabling the administrative authority to suspend expulsion orders and residence cancellations, and to grant residence even where the applicant was unable to meet certain requirements in the regularisation process. In addition, the law and its implementing decree established relatively clear means of proving migration criteria³⁵, thereby limiting the administration's margin of discretion in the granting of residence permits. The law also introduced a new system of administrative and judicial³⁶ appeals against administrative decisions and regulated access to public legal defence.³⁷

Finally, the law established a legal obligation, directed at the State through the National Directorate of Migration (DNM), "to provide for the adoption and implementation of measures aimed at regularising the migration status of foreign nationals" (Article 17). This orientation informed the institutional policies and practices adopted up to 2015, which likewise focused on migration regularisation and sought, to some extent, to embed a human rights perspective in the functioning and control practices of the DNM.

33 Organización Internacional para las Migraciones, *Evaluación del Acuerdo de Residencia del MERCOSUR y su incidencia en el acceso a derechos de los migrantes*, 2018: The Agreement establishes common and simplified rules and requirements for processing residence permits for nationals of MERCOSUR member and associate States. It introduces a migration criterion based on proof of nationality, referred to as the "MERCOSUR nationality" criterion. Under this framework, the submission of criminal background certificates and documentation establishing identity and nationality is considered sufficient for granting temporary residence to nationals of MERCOSUR member or associate States.

34 It could be applied for directly on the basis of family reunification and, if processed within the required timeframe, it could also be obtained through the passage of time with the second renewal of MERCOSUR residence and, for non-MERCOSUR migrants, with the third renewal. Unlike MERCOSUR migrants, non-MERCOSUR nationals are required to renew their residence annually.

35 In addition to the nationality criterion, the most common grounds are family reunification, employment (which requires the signing of an employment contract and the registration of the employer in a DNM registry), and study.

36 *García*, note 32, p. 79.

37 *Camila Carril*, *El rol de la Defensoría del Pueblo en el acceso a la justicia de las personas migrantes*, *Revista del Ministerio Público de la Defensa* 17 (2022).

Among the earliest measures were the implementation of a strategy to normalise the functioning of the DNM and training programmes for its staff and officials on the Migration Law and human rights.³⁸ Subsequently, there was a progressive development of mechanisms aimed at reducing material and symbolic distance between the administration and migrant communities, including regularisation programmes³⁹ and cost-control measures—such as the possibility of requesting fee exemptions with limited formal requirements—the establishment of local DNM offices and branches, the signing of cooperation agreements with local governments and civil society organisations, and the creation in 2011 of a Territorial Outreach Programme (*Programa de Abordaje Territorial*) to bring DNM procedures closer to neighbourhoods with a high concentration of migrants.

However, certain provisions within the regulatory framework introduced limits to this regularisation-oriented approach. In particular, the law required –and continues to require– regular entry into the territory as a condition for accessing residence, with exceptions to this requirement largely left to the discretion of the administrative authority.

It also established a classification, still in force, between migrants from MERCOSUR and non-MERCOSUR countries⁴⁰, whose conditions of access to residence are more complex and difficult to meet for individuals migrating in situations of vulnerability and irregularity.

As a result, irregularity among migrants from non-MERCOSUR countries facing structural or general barriers to accessing residence tended to be addressed, where it was addressed at all, on a case-by-case basis or through extraordinary regularisation programmes that lowered the requirements for access to regular status but were temporary in nature.

Thus, at the beginning of the period under study, the Argentine case was structured around a normative model that, despite its limits and tensions, tended to prioritise migration regularisation as a means of managing mobility and promoting social integration.

II. Chilean Case

In recent decades, Chile has consolidated its position as a relevant destination country for migration, particularly from Latin America, largely due to its relative political and macroeconomic stability. Since 2015, the country has experienced sustained growth in its migrant population, accompanied by significant changes in its composition. Whereas flows

38 Decree No. 836/2004, which declared an administrative emergency in the National Directorate of Migration; *María Dolores Linares / Cecilia Melella*, La Dirección Nacional de Migraciones entre 2008 y 2015: identidad institucional en disputa, POSTData 23 (2018), p. 213; *María Dolores Linares*, Política migratoria y capacidad estatal: la Dirección Nacional de Migraciones (República Argentina) entre los años 2004 y 2015, POLIS, Revista Latinoamericana 16 (2017), p. 245.

39 In 2004, through Decree No. 1169/2004, the government implemented a regularisation programme for “nationals outside the MERCOSUR framework”, and between 2006 and 2010 it launched the National Programme for “Migration Documentation Regularisation” for MERCOSUR nationals, also known as the *Patria Grande Plan* (Provision No. 53,253/2005 of the Ministry of the Interior).

40 *Fernández / Patallo*, note 32.

from Peru and Bolivia had previously predominated⁴¹, from 2015 onwards there has been a marked increase in migrants from Venezuela and Haiti.⁴²

This increase sustained figures of over one million regular entries, with a decline observed between 2021 and 2024.⁴³ However, this process has developed in parallel with a significant rise in irregular migration -reaching levels of up to 49 per cent- particularly in the context of restrictions associated with the pandemic and a series of recent regulatory changes.

Chilean migration regulation was structured for more than four decades around Decree Law No. 1.094 on Migration and Foreign Nationals, enacted in 1975 during the military dictatorship (1973-1990) and grounded in the logic of the National Security doctrine⁴⁴ and the neoliberal Constitution of 1980. It has been argued that the Chilean Constitution institutionalises forms of structural inequality, violence and democratic restrictions in relation to its own nationals.⁴⁵ Although it does not explicitly address migration, this institutional framework places migrants in a context of heightened vulnerability.

Thus, this normative framework is embedded in an institutional matrix that, while formally recognising guarantees for all individuals⁴⁶, establishes democratic restrictions and significant differences in access to political and labour rights⁴⁷ between nationals

- 41 Biblioteca del Congreso Nacional de Chile (BCN), Chile y la migración: los extranjeros en Chile, actualidad territorial, <https://www.bcn.cl/siit/actualidad-territorial/chile-y-la-migracion-los-extranjeros-en-chile> (last accessed on 1 December 2025). Between 2005 and 2015, the nationalities with the highest number of visas granted were Perú (40.4%) and Bolivia (13.1%). Thereafter, both remained stable at around 50,000 and 40,000 visas respectively, well below the changes driven by Venezuelan migration from 2015 onwards.
- 42 *Servicio Nacional de Migraciones (SERMIG)*, Estadísticas generales de registros administrativos. Cifras de enero 2015 a diciembre 2014 (Informe N°4) Santiago, Chile (2025). Indeed, their presence increased from 300,000 (26.4%) in 2018 to 750,000 (38%) in 2023. The Haitian population also saw an increase in the number of visas granted (120,000), although this declined considerably by 2021.
- 43 Servicio Nacional de Migraciones (SERMIG), Comunicado público sobre gestión migratoria, <https://serviciomigraciones.cl/comunicado-publico-sobre-gestion-migratoria/> (last accessed on 1 December 2025).
- 44 *Juan Pablo Jarufe*, El fenómeno migratorio. Evolución normativa, experiencia comparada, y principales hitos en la discusión del Proyecto de Ley de Migración y Extranjería., 19 July 2019, https://www.bcn.cl/asesoriasparlamentarias/detalle_documento.html?id=74862 (last accessed on 6 May 2026).
- 45 Fundación Nodo XXI, Análisis Constitucional Feminista, 2023.
- 46 *Liliana Galdámez Zelada / Karin Castro Cruzatt / Sebastián Cepeda Valdés*, Constitución, igualdad y migración: el mínimo desarrollo del ordenamiento chileno en la protección contra la discriminación de grupos migrantes. *Estudios constitucionales* 20 (2022); *Jaime Bassa Mercado / Fernanda Torres Villarrubia*, Desafíos para el ordenamiento jurídico chileno ante el crecimiento sostenido de los flujos migratorios, *Estudios constitucionales* 13 (2015).
- 47 It is in dialogue with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), which enshrines the principle of “non-discrimination in the recognition of rights” (Article 6, Part II).

and non-nationals. In this sense, migration governance in Chile is structured on a basis that legally distinguishes between national citizenship and the foreign population, placing migrants in a structurally more vulnerable position in terms of access to rights and social protection. This starting point is key to understanding the forms that migration regulation takes in the period under analysis and its contrast with other normative models in the region.

Law No. 1.094 granted broad powers to the administrative authority to regulate the entry and stay of foreign nationals; for example, Article 2 provided that “[b]y supreme decree, the entry into the country of certain foreigners may be prohibited on grounds of national interest or security.” Migration policy was thus historically configured as an instrument of control, with limited mechanisms aimed at the regularisation of migrants in irregular status and at the integration of migrants into Chilean society.

This approach was maintained, with partial modifications through executive measures, throughout the dictatorship and during subsequent democratic governments. It consolidated a political stance towards international migration and an institutional trajectory characterised by the centrality of migration control, an emphasis on security, and discretionary administrative management. Even under democratic rule, this entailed the continued application of a migration policy framed within a doctrine shaped under an authoritarian regime.

The absence of comprehensive legislative reform until 2021 contributed to the persistence of this framework. In this context, access to regular status largely depended on administrative decisions⁴⁸ and on specific regularisation programmes as mechanisms to address irregularity. The same applied to access to rights and social protection, which until 2021 was regulated through administrative instruments adopted in 2003 and 2017.⁴⁹

In practice, this framework resulted in a differentiated legal status and unequal access to rights for migrants, both in law and in its implementation, consolidating a model of migration governance based on the distinction between nationals and non-nationals and on the centrality of control as the organising principle of the system.⁵⁰

E. Comparison: Divergences and Convergences

The comparative analysis conducted in this study is organised around a central empirical dimension of migration governance in Chile and Argentina between 2015 and 2025: access to regular migration status, examined at both the normative level and in terms of policies and implementation practices. It also considers how transformations in legal pathways affect access to rights and social protection in both national contexts. This approach makes it possible to identify convergences and divergences in the mechanisms through which

48 Galdámez / Castro / Cepeda, note 48.

49 Luis Eduardo Thayer, *Migración, Estado y seguridad: Tensiones no resueltas y paradojas persistentes*, Polis 15 (2016), p. 109.

50 Galdámez / Castro / Cepeda, note 48.

States regulate migration beyond their differing normative trajectories, and to analyse how these transformations contribute to the production of irregularity.

1. *Argentina*

During the period under analysis (2015-2025), three successive governments with distinct political agendas and positions on international migration reshaped the country's migration policy: the conservative government led by former president Mauricio Macri and the Cambiemos coalition (2015-2019); the Peronist government of Alberto Fernández (2019-2023); and the libertarian government of Javier Milei (2023-2027). These shifts were materialised through modifications to the Migration Law via executive instruments (Decrees of Necessity and Urgency, DNUs), as well as through the adoption of policies, interpretative changes and administrative practices that progressively transformed Argentine migration policy.

1. Normative Aspects

Between 2015 and 2019, the government of Mauricio Macri introduced a set of measures framed within broader shifts in official discourse which, in a national context of social and economic crisis and an international climate of growing hostility towards mobility, sought to associate migration -particularly from neighbouring, racialised populations- with criminality and the alleged misuse of public services and social benefits, such as schools, hospitals, universities, subsidies and welfare programmes.⁵¹

Actors within the field of migrant rights advocacy interpreted these measures as an attempt to shift the human rights paradigm towards a security-oriented approach to migration management.⁵² At the normative level, the most significant change was the amendment of the Migration Law through DNU 70/2017.⁵³ This facilitated the expulsion of migrants by: (1) expanding the range of criminal records that could trigger the issuance of expulsion orders, and (2) modifying the system of appeals against decisions of the National Directorate of Migration (DNM) by shortening deadlines for filing appeals (from 30 to 3 days) and eliminating review instances.

Although DNU 70/2017 did not formally modify the regularisation regime, it introduced restrictions on access to regular status and to naturalisation. On the one hand, by expanding grounds for expulsion and modifying the appeals system, it increased the circumstances that prevented individuals from regularising their status, as well as those that

51 Brenda Canelo / Natalia Gavazzo / Lucila Nejamkis, *Nuevas (viejas) políticas migratorias en la Argentina del cambio, Si Somos Americanos* 18 (2018), p. 150.

52 Canelo *et al.*, note 53; Lila García, *Control migratorio en la Argentina reciente: Hacia un mapeo de los efectos de la modificación a la Ley de Migraciones a través de las acciones judiciales*, *Revista Academia y Crítica* 2 (2018), p. 83.

53 Decree No. 70/2017 amending Law No. 25.871, Buenos Aires, 27 January 2017. It also amended Citizenship Law No. 346.

allowed the administrative authority to cancel residence permits of individuals involved in criminal proceedings at any procedural stage.

With regard to access to naturalisation, the decree redefined the conditions for proving the two years of residence required to initiate the procedure, excluding forms of demonstrating ties to the country other than temporary or permanent regular residence, whereas previously the process could be initiated from an irregular status. On the other hand, it created a new administrative category, the “temporary stay permit”, for individuals in an irregular situation who were challenging expulsion decisions. Unlike the *precaria*, the document issued to individuals applying for or renewing residence, this permit restricted territorial mobility by preventing exit from and re-entry into the country. This limited administrative strategies that some migrants had previously used, often following guidance from DNM officials, to address situations of irregular entry.

Additionally, the decree expanded the grounds for inadmissibility and the grounds for the cancellation of residence. It also modified the regime of waivers on family reunification grounds, granting the DNM greater discretion in their application and introducing more demanding requirements, such as proof of cohabitation and economic ties. Taken together, these reforms not only strengthened the migration control regime but also restricted access to regular status, particularly for individuals in more vulnerable situations.

The return to power of a Peronist government in 2019 under Alberto Fernández, with Cristina Fernández de Kirchner as vice-president, did not entail an immediate return to the pre-2015 migration policy. In 2021, after two years of pressure from migrant organisations, the government repealed Decree 70/2017, thereby formally restoring the previous legal framework. The repeal reinstated the prior regime, nullifying the amendments introduced to both the Migration Law and the Citizenship Law.⁵⁴ However, even after its repeal, some of the criteria introduced by the decree continued to have practical effects, for instance in the rejection of citizenship applications by civil courts, which adopted restrictive interpretations regarding the proof of residence.

After two years of pressure from civil society organisations, the migration authority also implemented temporary regularisation programmes targeting specific groups of non-MERCOSUR migrants facing particular difficulties in accessing regular status, namely nationals of CARICOM countries and Senegal. Many of these migrants, who worked in public spaces as street vendors, were also subject to targeted police and judicial enforcement practices.⁵⁵ These programmes constituted targeted interventions which, while expanding access to regularisation for these groups, did not structurally or permanently alter the broader conditions of access to regular status for non-MERCOSUR migrants.

Finally, the reform introduced by DNU 366/2025 under the government of Javier Milei (2023–2027) consolidated and deepened the process initiated by DNU 70/2017, through the

54 Decree No. 138/2021 repealing Decree No. 70 of 27 January 2017.

55 Gisele Kleidermacher, Entre cofradías y venta ambulante: una caracterización de la inmigración senegalesa en Buenos Aires, Cuadernos de Antropología Social 38 (2013), p. 109.

implementation of changes that structurally affect the conditions of access to regular status and to migrants' rights.

With regard to access to social rights, and in continuity with processes initiated at the subnational level, the reform authorised the charging of fees in public universities and hospitals for foreign nationals without Argentine documentation, thereby introducing new restrictions on access to social protection.

In terms of access to residence, the reform expands the grounds for expulsion and redefines the criteria for access to permanent residence by: (1) eliminating the possibility of obtaining permanent residence on the basis of an Argentine family member or a family member with permanent residence, and (2) requiring proof of economic solvency -defined in strict terms- in order to transition from temporary to permanent residence. Another significant change concerns the modification of the State's obligation to instruct individuals to regularise their status in cases of irregularity. Whereas the previous regime established a duty on the part of the administration to promote regularisation prior to ordering expulsion, the new decree transforms this obligation into a discretionary power. This legal reform, combined with changes in DNM practices, once again makes expulsion a possible State response to migration irregularity.

As noted by civil society organisations, including Lucía Galoppo, a lawyer at the Centre for Legal and Social Studies (CELS)⁵⁶, this modification effectively alters the role of the State in relation to migration irregularity: from a State with a legal obligation to promote regularisation to one that contributes to the production of irregularity and subsequently enforces against it.

2. Policies and Practices

During the period 2015-2019, in parallel with and in line with the normative reforms, the DNM implemented administrative changes that created or deepened obstacles to regularisation. These transformations included, first, the digitalisation of migration procedures through the introduction in 2018 of the RADEX digital system. This system substantially altered the experience of booking appointments, initiating procedures and paying fees, introducing new barriers for groups with limited access to technological resources, difficulties in using digital platforms, or limited literacy in Spanish.

These changes were accompanied by increases in migration fees⁵⁷, reduced opening hours, staff cuts within the DNM, and the reduction of territorial service points, which

56 Personal communication.

57 Observatorio sobre Migraciones y Asilo en Argentina, Gabriel Chausovsky, *El DNI ¿más lejos o más cerca? Regularización y documentación de migrantes a través del sistema RADEX*, 2023: Between 2014 and 2018, the fees for MERCOSUR and non-MERCOSUR applicants increased fivefold, and subsequent increases quadrupled the cost of the procedure as a proportion of the minimum wage.

further restricted access to the administration, particularly in areas distant from the DNM's central offices.

Second, more restrictive administrative criteria were adopted in the processing of applications. This included, for example, the imposition of increasing requirements and formalities in applications for fee exemptions, as well as the systematic rejection of residence applications on humanitarian grounds and a more limited use of waivers based on family reunification. In this way, previously existing margins for regularising complex migration situations were reduced⁵⁸.

Finally, these measures were articulated with a strengthening of migration control mechanisms, including the proposal -later suspended- to create detention centres for individuals in breach of the Migration Law, the effective dismantling of the Territorial Outreach Programme, and an increase in residence control operations in public spaces and workplaces. Taken together, these administrative transformations not only accompanied the tightening of the normative framework but also effectively restricted access to regular status. They also reshaped the relationship that the State had progressively established with the migrant population between 2003 and 2015.

From 2019 onwards, at the level of policies and implementation, the change in government and the repeal of DNU 70/2017 did not entail an immediate transformation of the conditions of access to regular status. On the contrary, measures adopted during this period contributed to maintaining -and in some cases deepening- existing restrictions.

In particular, the COVID-19 pandemic had a significant impact on access to regularisation. Border closures, the interruption of services at the DNM, and the suspension of procedures hindered both the initiation and continuation of residence applications⁵⁹. These developments were compounded by administrative decisions that, in practice, maintained or even reinforced restrictions introduced under the previous administration. They included the absence of a general policy to regularise the situation of individuals who had entered the country through border crossings that were closed during the lockdown, the raising of evidentiary standards required to meet certain migration criteria beyond what was established in the legal framework, and the continued use of digital processing systems introduced previously, without substantive modifications to facilitate access.

In this context, the combination of persistent restrictive administrative practices and the exceptional conditions resulting from the pandemic contributed, in practice, to limiting

58 This particularly affected migrants from countries such as Senegal, Haiti and the Dominican Republic, non-MERCOSUR countries whose nationals required a tourist visa to enter Argentina and who, due to the cost or lack of access to an Argentine consulate, had entered through unauthorised border crossings and were therefore unable to demonstrate lawful entry in order to initiate regularisation procedures.

59 Brenda Canelo / Corina Courtis, *Cuestión de papeles: migrantes y acceso al DNI en tiempos pandémicos en Buenos Aires*, *Cuestión Urbana* 6 (2022), p. 73; Observatorio sobre Migraciones y Asilo en Argentina, Gabriel Chausovsky, note 57.

access to regular status, even in a scenario of formal reversal of the normative reforms introduced by DNU 70/2017.

The normative transformations introduced by Decree 366/2025 under the government of Javier Milei have been accompanied by a set of policies and practices that reinforce this reorientation of the migration regime. These include the implementation of migration control operations and the detention of undocumented individuals in public spaces, particularly in neighbourhoods with a high concentration of migrants, as well as the intensification of public discourses that mediatise and spectacularise the enforcement of irregular migration.

At the same time, migration policy has incorporated selective mechanisms of regularisation, such as an extraordinary and temporary programme targeting Venezuelan nationals, implemented in 2024, which simplifies the requirements for accessing residence. These types of targeted and temporary interventions reflect a differentiated logic of managing regular status, which does not alter the structural restrictions on access to residence but enables the selective management of particular migration flows.

II. Chile

1. Normative Aspects

From the perspective of normative paradigms, the Chilean case is characterised by the continuity of a regulatory logic centred on control and security, rather than by the introduction of recent structural changes. This is reflected in the initial migration framework, Decree Law No. 1.094 of 1975, and is further reinforced in Law No. 21.325 of 2021.

These normative frameworks are embedded in an institutional tradition linked to the National Security doctrine and a legal culture characterised by granting broad decision-making powers to the administration. Moreover, this regulatory framework is articulated with other legal instruments, including the 1980 Constitution, Supreme Decree No. 597 (regulating Decree Law No. 1.094), Law No. 20.430 on refugee protection, and Law No. 20.507 on the smuggling of migrants and trafficking in persons. Together, these instruments delimit the conditions of stay and regularisation.

With regard to access to regular status, Law No. 1.094—applicable until 2021—established visa categories (Art. 22) granted by the Ministry of the Interior within Chilean territory, which generally required the submission of criminal background certificates and a valid passport. These categories structured access to regular status on the basis of specific criteria, none of which were linked to nationality or to regional integration schemes such as MERCOSUR. Among the most relevant were: (1) the contract-based visa, strictly tied to the existence of an employment relationship and whose validity depended on the continuation of the contract; (2) the student visa, temporary in nature and not permitting paid employment; (3) temporary residence, granted on the basis of family ties or economic utility criteria; and (4) permanent residence, which could be obtained after two years of contract-

based residence, was conditional upon the continuity of regular residence, and could be revoked in cases of prolonged absence.

Access to these visas and the continuity of regular status were subject to the fulfilment of strict requirements, such as obtaining and maintaining a formal employment contract without interruption, the submission of enrolment and attendance certificates for study-based visas, among others. In addition, as noted above, the framework granted broad discretionary powers to the migration authority in individual cases to grant or deny residence, for example when it authorised the granting of temporary residence to individuals able to demonstrate that their stay was “useful or advantageous”.

At the same time, the broad discretionary powers granted to the administration by the law provided successive national governments with a degree of flexibility to resolve favourably cases of individuals who did not strictly meet migration criteria. Moreover, this flexibility enabled institutional actors to create and implement, through decrees and administrative measures, non-permanent avenues of access to rights, generally in response to political pressures and specific conjunctural dynamics. Thus, for example, the government of Michelle Bachelet (2014–2018) introduced changes related to social protection⁶⁰ and, like Sebastián Piñera’s (2018–2022) later administration, implemented special regularisation measures.

These dynamics unfolded in a context marked by social and political tensions. On the one hand, there were tensions between discourses of openness towards Venezuelan migration flows—which gained prominence from 2015 onwards⁶¹—and the limited availability of legal pathways for entry and stay.⁶² On the other hand, the sociopolitical climate shaped by the social uprising of 2019 –a major moment of conflict in Chile– together with the

60 Michelle Bachelet’s administration placed access to social benefits for the migrant population on the governmental agenda, enabling access to public healthcare and education, as well as to pension systems. However, this process was not without difficulties, largely due to a lack of institutional coordination, which significantly limited migrants’ effective access to these benefits. This was marked by the adoption of administrative strategies aimed at facilitating access to social benefits, such as specific regularisation periods and the issuance of temporary tax identification numbers (RUT), which were, in practice, incompatible with subsequent regularisation.

61 Organización Internacional para las Migraciones (OIM), *Tendencias Migratorias Nacionales en América del Sur*. Oficina Regional para América del Sur, 27 February 2018,

62 This was further reinforced by the Chilean State’s decision in 2018 not to sign the Global Compact for Safe, Orderly and Regular Migration (A/RES/73/195), with the Minister of Foreign Affairs arguing that it constituted an international framework that could undermine national sovereignty. Ministerio de Relaciones Exteriores, Chile no va a adherir a nada que pueda ser usado en su contra y que atente contra nuestra soberanía, 10 December 2018, <https://www.minrel.gob.cl/sala-de-prensa/chile-no-va-a-adherir-a-nada-que-pueda-ser-usado-en-su-contra-y-que-atente> (last accessed on 6 May 2026).

COVID-19 pandemic, contributed to the strengthening of control- and security-oriented policies.⁶³

At the normative level, this was reflected in measures such as the militarised closure of borders⁶⁴ and the possibility of denying entry to, or imposing quarantine measures on, foreign nationals. In this context, xenophobic discourses and rejection of non-nationals became more widespread, as the institutional strain on public services—particularly in healthcare—was socially attributed to vulnerable populations, publicly characterised as migrants.

Legal constraints on regular entry and stay in the territory did not reduce arrivals. On the contrary, they led to an increase in entry through unauthorised border crossings.⁶⁵ To address the insufficiency and inaccessibility of legal pathways, the national government resorted to temporary and extraordinary schemes for entry and migration regularisation.

This both resulted from and deepened the disconnect between a normative framework centred on a logic of national security and control—granting broad discretionary powers to the administration—and the actual dynamics of mobility. In 2018, the humanitarian crisis at the northern border, particularly in Colchane, made these tensions visible, as thousands of people—mostly Venezuelan nationals—entered Chile through unauthorised crossings, without the possibility of doing so through regular channels.⁶⁶

Previously, the government of President Michelle Bachelet had implemented a temporary regularisation programme, the “Regularisation of Stay Process”. This amnesty programme, which did not require a valid employment contract, lowered access requirements and enabled more than 20,000 individuals to obtain visas, thereby reducing the number of

63 Decree No. 4/2020 of 8 February 2020, declaring a health alert for the specified period and granting extraordinary powers in response to a public health emergency of international concern (PHEIC) due to the outbreak of the novel coronavirus (2019-nCoV).

64 The militarised border closure entailed “denying entry into the country or ordering the isolation of foreign nationals not resident in Chile who were suspected of or affected by the novel coronavirus 2019”.

65 Data from the Jesuit Migrant Service (SJM) report 8,048 irregular entries in 2019, 16,848 in 2020, and an unprecedented increase to 43,541 in 2021; *Carolina Stefoni/ Matias Jaramillo /Aline Bravo / Gustavo Macaya-Aguirre*, Colchane. La construcción de una crisis humanitaria en la zona fronteriza del norte de Chile, *Estudios fronterizos* 24 (2023).

66 *Norberto Paredes*, La crisis sin precedentes de la pequeña Colchane, el pueblecito chileno que tiene más migrantes que habitantes, *BBC News*, 6 February 2021, <https://www.bbc.com/mundo/noticias-america-latina-55950140> (last accessed on 4 May 2026); At the same time, while messages of openness were promoted at the political level, restrictive mechanisms governing access to regular status were being consolidated at the normative and administrative levels. Thus, for example, President Sebastián Piñera travelled to Cúcuta to support Juan Guaidó’s self-proclamation, while one of his ministers publicly stated, “come to Chile, we have work for all of you.” See *Germán Silva Cuadra*, El spoiler de Piñera en 2019: ‘Vénganse a Chile, ¡tenemos trabajo para todos ustedes!’, *Elmostrador*, 31 January 2022, <https://www.elmostrador.cl/noticias/opinion/2022/01/31/el-spoiler-de-pinera-en-2019-ven-ganse-a-chile-tenemos-trabajo-para-todos-ustedes> (last accessed on 4 May 2026).

people in irregular status and without access to social benefits. In addition, its implementation made it possible to generate updated statistical data on the migrant population in the country.

In 2018, the government of Sebastián Piñera introduced a new extraordinary regularisation programme through the so-called “Visa of Democratic Responsibility”. The application process cost approximately USD 90, in addition to the required documentation, and more than 155,000 individuals regularised their status through this mechanism. These visas sought to channel Colombian and Venezuelan migration flows, alongside an increase in asylum applications, through the creation of an institutional mechanism distinct from the international refugee protection framework.⁶⁷

Although presented as stable regularisation mechanisms, these programmes established temporary residence schemes requiring transition to other categories in order to ensure continued stay, thereby producing fragmented and unstable migration trajectories. In addition to operating as a regulatory “bypass” to the right to asylum and the principle of non-refoulement⁶⁸, this new category is limited to a duration of two years, requiring applicants to transition to permanent residence in order to remain in the country. This, in turn, requires identity documentation that is not always easily obtainable, or an employment contract, creating a situation of uncertainty for individuals who have already resided in the country for at least two years.

The social tensions that characterised the social uprising and the pandemic were used by the government to justify the need for changes to migration legislation. This led, in 2021, to the enactment of the new Migration Law No. 21.325. Discursively, this process was presented as an update and democratic reconstruction of the migration regime, incorporating a catalogue of rights and human rights principles.⁶⁹

However, the law maintains an emphasis on control, restricts access to regular status, and reinforces mechanisms of expulsion and border management. It also introduces as an objective the promotion of “orderly, safe and regular” migration, in line with global trends towards strengthened migration control⁷⁰. Finally, while it proclaims principles of equality and non-discrimination, it introduces explicit distinctions in treatment between nationals

67 United Nations, Convention Relating to the Status of Refugees 1951; Declaración de Cartagena sobre Refugiados 1984.

68 Art. 33, Convention Relating to the Status of Refugees.

69 This framework reflects the dissonances between normative structures and the articulation of bureaucracy, institutional arrangements and practices. It was shaped in a context of a public health crisis, marked by a significant rise in xenophobia, and through a legislative process in the Senate characterised by the limited capacity of social organisations to participate actively. This resulted in a regulatory framework with little or no effective participation, associated with a security-oriented approach and with a governing strategy under Sebastián Piñera framed around the objective of “putting the house in order”, in line with a broader regional and global trend towards promoting “safe and orderly migration”.

70 A measure strengthened during the COVID-19 pandemic and subsequently sought to be made permanent through legislative reform; *Galdámez / Castro / Cepeda*, note 48.

and foreign nationals, and between migrants in regular and irregular status in access to rights.

One of the most significant changes affecting access to regular status is the requirement to apply for visas through consular procedures, meaning that all regularisation processes must be initiated outside the national territory. This externalisation of the border significantly limits the possibilities of regularisation for individuals already present in the country who are unable to maintain their migration status due to difficulties in meeting the requirements for residence renewal.

The new law also introduces border control mechanisms such as the immediate return of migrants at the border—a form of “summary return”—to the country from which they arrived. In addition to granting broad discretion to officials, this practice raises tensions with refugee law and due process guarantees, thereby reinforcing the security-oriented character of the system.

In practice, these normative provisions have contributed to an increase in entries through unauthorised crossings by individuals unable to meet visa requirements or afford the costs of application, thus reinforcing the dynamics of the production of migration irregularity.

2. Policies and Practices

With regard to the implementation of migration law through policies, the enactment of Law No. 21.325 transformed the visa application process, which became fully digitalised. While this change accelerated procedures that had previously been carried out by mail, it also introduced barriers for individuals without access to digital devices or the internet, particularly migrants in transit.

In addition, the law substantially reconfigured the institutional framework responsible for implementing migration policy and its instruments. In this regard, it replaced the Department of Immigration and Migration (DEM) with the National Migration Service (SNM), which became a decentralised public body with regional offices and its own legal and financial autonomy. It also established an Interministerial Council on Migration Policy and Regional Directorates, with the aim of improving access to information, decentralising migration governance—previously highly centralised—and enhancing operational capacity in contexts such as public health emergencies.

In practice, however, the implementation of this new institutional framework generated new obstacles in migration procedures, including longer waiting times during the pandemic and problems related to the transfer of information between administrative units and institutions. During the transition, data from thousands of regularisation applications were lost.⁷¹

71 *Macarena Segovia / Luna Angel*, *Falla en el sistema de migraciones y falta de respaldo obligaron a reconstruir datos de miles de extranjeros desde 1993 a 2021*, Ciper Chile, 22 February 2022, <https://www.ciperchile.cl/2022/02/21/falla-en-el-sistema-de-migraciones-y-fal>

In addition to the new data system, associated with a form of technological governance, in 2023 the National Migration Service (SNM), in coordination with the Investigative Police (PDI), implemented the “Biometric Registration” programme. This government strategy aimed to quantify the migrant population in irregular status and to improve policy efficiency and security through the collection of fingerprints and biometric data.⁷² However, it was not linked to any mechanism for regularising migration status and, at the same time, was associated with the expulsion of migrants in complex regulatory situations.

Taken together, the Chilean case shows the persistence of a normative model that, even while incorporating new instruments and discourses, remains structured around the management of migration as a problem of control, generating conditions that hinder access to stable pathways to regular status.

These practices have become institutionalised and have given rise to mechanisms that are not necessarily formal but are nonetheless embedded in administrative cultures. For example, access to social benefits is often contingent on documentation linked to a formal employment contract, in a context where national-level programmes have been limited. This contributes to the production of differentiated forms of inclusion, in which migrants face constraints in accessing public education due to documentation requirements, while labour markets tolerate informal work, pushing certain groups into precarious conditions that affect their ability to secure residence, access rights, employment and housing.

F. Discussion and Final Reflections

The comparative analysis of Argentina and Chile reveals a shift towards more securitised forms of migration governance in the Southern Cone over the past decade. This shift has translated into the consolidation of institutional mechanisms that manage migration irregularity and contribute to the precarisation of the living conditions of non-nationals.

Both countries originate from distinct normative trajectories. Argentina developed a model oriented -albeit with limitations- towards regularisation and the recognition of the right to migrate, in which the institutional response to irregularity prioritised regularisation over expulsion. Chile, by contrast, was structured around a national security framework characterised by high levels of administrative discretion, in which regular status operated more as a concession than as a right.

Despite these divergent starting points, the analysis identifies three main areas of convergence. First, both countries have increasingly relied on executive and administrative mechanisms to reshape migration policy. In Argentina, the most significant changes occurred through executive decrees (DNU 70/2017 and DNU 366/2025), which altered access

ta-de-respaldo-obligaron-a-reconstruir-datos-de-miles-de-extranjeros-desde-1993-a-2021/ (last accessed on 4 May 2026).

72 Servicio Nacional de Migraciones (SERNAM) Programa de empadronamiento biométrico (2023). <https://serviciomigraciones.cl/empadronamiento-biometrico-hasta-fin-de-ano/ultima-revision-diciembre-2025> (last accessed on 4 May 2026).

to regular status and expanded State discretion. In Chile, by contrast, normative rigidity has been managed through administrative provisions and control mechanisms that operate as filters prior to entry, limiting possibilities for regularisation from the outset of migration trajectories.

Second, both cases show an increasing digitalisation of migration governance. The implementation of systems such as RADEX in Argentina and digital infrastructures within the National Migration Service in Chile has been framed as administrative modernisation. However, in practice, these mechanisms have introduced new barriers to access, particularly for individuals with limited technological resources or difficulties in meeting complex administrative requirements, thereby reinforcing segmentation in access to regular status.

Third, both countries have recurrently resorted to extraordinary regularisation mechanisms in response to the limitations of ordinary regimes. These temporary “windows” do not eliminate structural barriers but rather manage them, producing fragmented and unstable forms of regularity. In this sense, migration irregularity does not appear as a system failure, but as an effect of its normative design and modes of implementation.

Within this framework, the comparative analysis shows that both Argentina and Chile are converging towards forms of precarious or liminal legality. This convergence is sustained, among other factors, by the growing centrality of economic and labour requirements as criteria for access and permanence. In Argentina, particularly following recent reforms, the introduction of economic solvency requirements redefines access to residence and shifts migration policy away from a regularisation paradigm towards one that structurally restricts permanence. In Chile, these criteria have long been more prominent, linking access to rights and regular status to labour market insertion and economic capacity. In both cases, access to regular status becomes increasingly uncertain, conditional and reversible.

These transformations reveal a widening gap between normative language and its effective implementation. While human rights language remains present in Argentina’s legal framework, its operability has been eroded by restrictive reforms and administrative practices. In Chile, although recent legislation incorporates references to rights, these remain subordinated to criteria of control, economic solvency and labour insertion. In both cases, regularisation is increasingly configured as an exception or concession rather than a guaranteed right.

In this context, migration irregularity does not emerge as a system failure or solely as the result of individual trajectories, but as an outcome produced by normative and administrative frameworks. At the same time, States deploy mechanisms of control, sanction and expulsion aimed at managing and policing the very irregularity they help to produce. Thus, the production and control of irregularity operate as two complementary dimensions of contemporary migration governance.

Taken together, these processes show that, despite their different starting points, Argentina and Chile are converging towards forms of migration governance that do not seek the full integration of migrant populations, but rather the management of their precariousness and, in some cases, the discouragement of their permanence. The production of

irregularity thus emerges as a central mechanism of regulation, sustained through both legal reforms and administrative practices.

This analysis suggests the need for further research on recent transformations in regional migration governance, focusing on concrete implementation practices and their effects on migrants' trajectories, particularly in terms of access to regular status and the strategies developed to navigate increasingly restrictive contexts.



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