

Cintia Freitas: Migración forzada y refugio: retos actuales para la protección internacional

Cintia Freitas. Es profesora brasileña de Derecho en la Universidade do Estado do Rio Grande do Norte (UERN) y Doctora en Derecho, con concentración en Derechos Humanos, por la Universidade de São Paulo (USP). Realizó una estancia doctoral como Visiting Researcher en la University of Ottawa, donde desarrolló parte de su investigación sobre migración forzada, refugio de personas mayores y derechos humanos. Cuenta con experiencia profesional como abogada y asesora jurídica en materia de refugio y migración, habiéndose desempeñado en el Centro de Referencia y Atención para Inmigrantes (CRAI) de São Paulo (Brasil). Su trayectoria articula la práctica jurídica con la investigación académica, con especial énfasis en la migración forzada, las personas mayores en situación de refugio, el género y los derechos humanos desde un enfoque interseccional.

1. How has the issue of migrants and refugees been regulated in the international regulatory framework?

Forced migration constitutes one of the most pressing global challenges of our time and has been progressively addressed within the international regulatory framework through both refugee law and international human rights law. The cornerstone instrument is the 1951 Convention Relating to the Status of Refugees, complemented by its 1967 Protocol, which removed the original temporal and geographic limitations. Together, these instruments define who qualifies as a refugee and establish the core rights and protections to which refugees are entitled, including the principle of *non-refoulement*, a fundamental norm of international protection.

In addition to the global framework, regional developments have played a significant role. In Latin America, the Cartagena Declaration on Refugees (1984) broadened the refugee definition to include persons fleeing generalized violence, massive human rights violations, and other circumstances that seriously disturb public order. Al-

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though not legally binding, the Cartagena Declaration has strongly influenced domestic legislation across the region.

In Brazil, refugee protection is regulated by Law No. 9.474/1997, which incorporates both the 1951 Convention and the Cartagena expanded definition. Furthermore, Brazil adopted a new Migration Law in 2017 (Law No. 13.445/2017), grounded in a human rights-based approach and aimed at replacing the former security-oriented framework. It is also essential to distinguish the legal category of “refugee” from broader situations of forced migration. Not every person compelled to leave their country meets the formal criteria established by international refugee law; however, all individuals in situations of forced displacement are entitled to protection under international human rights law.

2. How has the international regulatory framework evolved in response to

recent conflicts and crises that have led to an increase in migrants and refugees around the world? Especially in the case of Venezuela, Haiti, Russia, Ukraine, Palestine and Israel.

The increase in forced migration linked to recent conflicts and crises must be understood as the consequence of deeper structural problems rather than as an isolated “migration crisis” or “refugee crisis”. Contemporary displacement movements are primarily the result of wars, political instability, economic collapse, poverty, and environmental crises occurring across different regions of the world. When examining situations such as those in Venezuela, Haiti, Russia, Ukraine, Palestine, and Israel, it becomes evident that people are not moving by choice, but because they are compelled to leave their homes in order to survive. In this sense, they represent the human consequences of these crises, not their cause.

Such movements stem from political, military, economic, and humanitarian crises that States and the international community have been unable to prevent or effectively resolve. International refugee law, particularly the 1951 Refugee Convention, was originally developed in response to the massive displacement caused by the Second World War. Although it remains a cornerstone of international protection, it was conceived within a markedly different historical and geopolitical context. Today, forced migration is significantly more complex, protracted, and global in nature, involving not only armed conflicts but also systemic violence, state fragility, institutional collapse, and long-term instability.

While States and international organizations have sought to respond through cooperation mechanisms and public policies, no single country can adequately address these movements alone. Forced migration is inherently a global phenomenon and therefore requires shared responsibility. This dynamic is particularly visible in Europe, where refugees often arrive in specific countries due to geographic proximity, raising challenging questions concerning responsibility-sharing, distribution, and long-term integration. Moreover, numerous conflicts and humanitarian crises remain relatively invisible because they receive limited media coverage. While certain situations dominate international attention, others are largely overlooked despite generating significant displacement.

This selective visibility directly influences international responses and reinforces inequalities in protection. Ultimately, although the international regulatory framework has evolved over time, it remains insufficient to fully respond to the scale and complexity of contemporary forced migration. Without stronger international cooperation, effective public policies, and a genuine commitment to peace and human rights, displacement will persist and protection gaps for migrants and refugees will continue to widen.

3. In view of the changes in reality, how have countries regulated their migration policies and do you consider that there have been cases of discrimination or criminalization of migrants and refugees that have been materialized in these policies?

Unfortunately, in many countries, migrants and refugees continue to experience

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daily violations of their rights. One of the most serious concerns is the criminalization of migration. This is particularly troubling because people in situations of forced migration are victims of wars, political crises, economic collapse, poverty, and environmental disasters. They are not responsible for these circumstances, yet migration policies frequently treat them as though they were offenders.

There is a widespread tendency to label migrants as “illegal”, but no human being can be illegal. At most, a person may be in an irregular migratory situation. The use of such terminology reflects a dehumanizing perspective embedded in many migration policies and administrative practices. When individuals are described as “illegal,” they cease to be recognized as rights-holders and are instead perceived as problems to be controlled, reinforcing discrimination and exclusion. In many countries, migration policies are selective. Some States can welcome certain groups while rejecting others, particularly those who are more socially and economically vulnerable. As a consequence, migrants and refugees frequently suffer twice: first, due to the circumstances that forced them to leave their countries, and second, because of the discrimination and hostility

ity encountered in destination countries. Xenophobia remains a reality in various parts of the world, even if it is not always openly acknowledged. In some contexts, discrimination may not be explicitly enshrined in legislation, yet it becomes evident in practice, especially in the way public officials handle documentation, administrative procedures, and access to essential services. Professionals who work directly with migrant and refugee populations regularly hear these experiences firsthand. Reports of mistreatment, lack of understanding, and abuses of authority may happen. This demonstrates that discrimination and criminalization are not merely abstract concepts; they are materialized through public policies, institutional practices, and interactions with the State.

For these reasons, it is evident that many migration policies continue to reflect fear, exclusion, and control rather than protection and solidarity. Addressing these challenges requires a fundamental shift in how migrants and refugees are perceived and treated within national and international legal frameworks.

4. Can you tell us about the specific challenges faced by women and girls in situations of forced migration? How have you approached this discussion from an intersectional approach? How does this influence your approach to their cases?

Even outside situations of forced migration, women already occupy a structurally vulnerable position in many societies due to persistent gender inequalities. They face daily challenges and discrimination simply because of their gender. When forced

migration is added to this reality, vulnerability is intensified. In this context, migration represents an additional layer of risk, insecurity, and difficulty for women and girls. There is a clear intersection between gender and forced migration.

During displacement processes, women and girls are often more exposed to violence, exploitation, exclusion, and insecurity. Although they require specific forms of protection, their needs are frequently overlooked in both policy design and implementation. For this reason, an intersectional approach is essential when addressing migration and refugee protection. However, intersectionality should not be limited to gender alone. Other social markers also produce compounded vulnerabilities in contexts of forced displacement. Children, for example, are often directly affected by conflict and instability and require particular safeguards.

Likewise, older persons constitute a group that is frequently ignored and rendered invisible within migration debates and protection frameworks. This dimension is particularly relevant to my own research, which highlights how older persons in refugee situations are often absent from public policies and insufficiently considered within refugee protection systems. Older persons, women, and children tend to face heightened risks precisely because they are not perceived as priorities. In many contexts, their specific needs are neglected, which increases their vulnerability and restricts their access to adequate protection and assistance.

For these reasons, when approaching cases involving forced migration, it is

crucial to adopt a broader intersectional perspective that considers not only gender, but also age and other structural factors that shape vulnerability. Such an approach enables a more accurate understanding of lived experiences and underscores the necessity of tailored, rights-based responses within refugee protection systems.

5. Can you describe a particularly difficult case where you have worked with asylum seekers or refugees? How did you approach it?

One particularly difficult case I recall involved a person in refugee situation that I assisted while working in Brazil. For confidentiality reasons, I cannot disclose identifying details, but I can mention that he was from a South Asian country and intended to reach the United States. He boarded a ship hoping to arrive there, but the route unexpectedly changed. After three months at sea, the vessel arrived in Brazil instead.

Upon disembarkation, he did not even know which country he was in. Although he spoke English, he could not speak any word in Portuguese. When I offered him assistance, he was in a state of profound distress, largely because he was unable to communicate with anyone. At one point, he told me that he would rather be imprisoned in Europe or in the United States than be free in Brazil, simply due to the language barrier and his overwhelming sense of isolation. This case led me to reflect deeply on the complexity of arrival experiences in situations of forced migration,

particularly for individuals who have endured extremely harsh and prolonged journeys. Many migrants are compelled to undertake dangerous routes, crossing oceans and seas out of sheer desperation. Similar scenes of despair have been witnessed in other contexts, such as Afghanistan, in 2021, where people attempted to escape by clinging to departing airplanes.

The experience reinforced for me the importance of carefully examining how countries receive refugees and asylum seekers, especially regarding integration policies. Language support, in particular, is not merely a practical tool but a fundamental element of dignity and inclusion. In Brazil, for example, there has been a notable expansion of Portuguese language courses, promoted through both public initiatives and private or civil society efforts, aimed at supporting refugees and migrants who do not speak the language. Similar initiatives can and should be encouraged in Peru and other Latin American countries, which increasingly receive people from different parts of the world who may not speak Spanish. Strengthening language access significantly enhances reception, integration, and the overall support provided to individuals in situations of forced displacement.

Ultimately, this case confirmed that effective international protection for refugees and asylum seekers is an exceptionally sensitive and complex issue. It requires collective responsibility, thoughtful public policies, and a humane approach, rather than simplistic or individualized responses. ♦