**Border control, COVID-19 and the criminalization of irregular migration in Chile**

**Daniel Quinteros**

Arturo Prat University & University of A Coruña

**Romina Ramos**

Arturo Prat University

**Roberto Dufraix**

University of Tarapacá

**Introduction**

As in other countries, the border control regime in Chile has undergone a series of transformations in the context of Covid-19. Indeed, the available evidence indicates that the closure of borders implemented due to the pandemic allowed the deployment of a number of restrictive strategies on human mobility that have caused an unprecedented increase in migratory irregularities. According to official reports, in 2019 there were 8,048 entries registered through unauthorized border crossings. In 2020, this figure more than doubled to 16,848 and by September 2021 it stood at 33,503, which represents more than 22 times the annual mean for 2011-2015 (Loyal, 2021).

More than three quarters of this migratory flow corresponds to Venezuelan nationals who have been displaced as a result of the humanitarian emergency taking place in their country (Stefoni et al., 2021). The general increase in armed violence, the violation of human rights, and, in general, the economic collapse along with that of public services have pushed more than 5.9 million Venezuelans into a situation of forced displacement (R4V, 2021), leading to the second largest process of forced mobility in recent years, surpassed only by the refugee crisis in Syria.

At the beginning of the pandemic, the flow of Venezuelan people ran up against significant hurdles throughout South America, mainly due to the closure of land border crossings (Brumat, 2021). Such was the case of the Chilean-Peruvian border in 2019, when a consular visa was imposed on all Venezuelan nationals wishing to enter Chile (Olavarría, 2019), with said border closure triggering a full humanitarian crisis on the Chilean northern frontier at the beginning of 2021 (Cociña et al., 2021; Tapia et al., 2021). In response to this humanitarian emergency, the Chilean State adopted a wide range of control measures in order to prevent the entry of displaced people through any of the *trochas* or illegal migratory trails that traverse the Andean highlands (Cociña Cholaky & Quinteros, 2021). Thus, the pandemic represented a scenario of opposites, in which it was possible to observe, on the one hand, the implementation of very intense restrictive measures (border closures) and on the other, a massive flow of forced migrants whose final destination was Chile.

Based on the above, this chapter seeks to describe the historical configuration of migration control in Chile and the changes it has undergone during the pandemic. For this purpose, it firstly takes into consideration the contributions in terms of the Criminology of Mobility, which may be especially useful for analyzing the growing interrelation observed between the rationale and foundations of the criminal justice system towards migration management (Bhui, 2013; Stumpf, 2016, 2013). Secondly, historical and empirical background information is presented in order to describe (and understand) the various measures of immigration and border restrictions that have been implemented in Chile over recent decades. In the following we shall complement this analysis with the measures adopted in response to border closures as a result of the pandemic, and finally, we shall offer the main conclusions of the study.

# Criminology of mobility, Crimmigration and Instrumentalism

The growing relationship between criminal, migration and border policies can be understood as part of a broader strategy of social control, which tends to increase the surveillance devices, privatize public services, make working conditions more precarious, and impoverish important segments of the population. In this sense, measures such as restricting access to regular forms of migration, as well as intensifying border control or implementing broad deportation processes are the mechanisms of a strategy of control aimed at disciplining the new global proletariat, by promoting processes of differential or subordinate inclusion in the labor market, the political sphere and social life in general (De Giorgi, 2010). In this respect, Bosworth, Franko and Pickering (2018), for example, have analyzed the progressive precariousness of the legal status of the migrant population, where criminal control and migration control play an essential role in regulating the relationship between the State and individuals.

Consequently, it has been argued that while the State seeks to maintain an internal supremacy through a policy of criminalization, it also seeks to maintain external autonomy through immigration policies and border protection (Franko, 2013). For this reason, Bosworth et al. (2018), point out that given the fact that detentions or deportations are applied and experienced as a punishment, it is possible to understand that their role in the control of mobility is not merely auxiliary to the criminal process, but rather a constitutive part of the transformations that can be observed in the field of criminality. However, and despite the fact that such a punitive rationale should have no place in an efficient migration system (Aliverti, 2015), the incorporation into the ambit of border control of various police, judicial and penal practices have led to an intense process of criminalization of migration (Wacquant, 1999) and a racialization of mobility through the rejection of the *other* based on the perception of their inferiority (Tijoux and Córdova, 2015).

This relationship has been condensed by the idea of *​​crimmigration*, which seeks to precisely describe the recently observed fusion between criminal law and migration law. In her work, Stumpf (2006) imagines a memorandum to the President of the United States in the year 2017, which comments on the tension between two social representations of migrants: one that aims for their inclusion, considering them as full members of the society, and another that, after reducing them to the category of criminal subjects, is strongly oriented to their exclusion. In this sense, the idea of ​​*crimmigration law* is a general concept that seeks to describe both the increase in the reasons why it is possible to criminally expel a foreigner, as well as the creation of new criminal categories in terms of administrative regulations, such as those associated with irregular or clandestine border crossings (Stumpf, 2013). Thus, the literature has warned us that this overlap between administrative law and criminal law is being carried out under conditions of interchangeability and mutual reinforcement (Bowling and Westenra, 2018), thereby causing a system of control geared towards the exclusion of immigrants. However, it should be noted that this exclusionary approach, with which immigration control is being designed, is not solely based on the circumstance of having or not having the necessary documentation. Behind this approach, it has also been possible to observe logics of exclusion based on xenophobia and/or racism (García Hernández, C., 2013) that impact the work undertaken by criminal justice operators and in the collective imagination.

Although the origin of the concept is restricted to the historical and political specificities of the U.S. context (García Hernández, 2013), the term *crimmigration* has served as a general frame of reference to gather various investigations around these new configurations of control and surveillance (Stumpf, 2013). In South America, for example, this thesis has been particularly used to review the relationship between criminal policy and migration policy, such as the case of Brazil (de Moraes, 2015; de Moraes, 2018). In the case of Argentina, it has also been recently used to analyze the expulsions of foreigners and other modifications, which have sought to deepen migration control and border surveillance (García, 2015; Penchaszadeh & García, 2018). In the case of Chile, the above has been studied for some years, particularly in respect to the application of administrative sanctions (Quinteros, 2016), the priority given to criminal expulsions (Brandariz et al., 2018) and to the tensions created in Chilean constitutional matters (Navarro, 2021).

More recently, the above has been particularly used as a frame of reference in the context of the COVID-19 pandemic. Here, investigations were focused on the changes produced by the pandemic regarding the detention and expulsion of migrants (Brandariz and Fernández-Bessa, 2021; Schiriro, 2021; Stefanelli, 2021), as well as on the criminalization processes, where the migrant is seen as a danger to public health (McNeill, 2021). In terms of South America, it is important to note the reaction of the countries of the region to the significant increase in the Venezuelan migratory flow, which has oscillated between two extremes: on the one hand, those who have tried to protect and regularize the flow with a long-term outlook, as has been the case of Argentina, Brazil, Colombia and Uruguay; and, on the other, those countries where a security discourse and policies predominate, and where, in the best of cases, a series of *ad hoc* and short-term regularization mechanisms have been adopted, as has occurred in Ecuador, Peru and Chile (Brumat, 2021).

In this sense, the evidence shows that the idea of *​​crimmigration* accounts for a broader process of instrumentalization of the legal norms and legal procedures. As Sklansky (2012) stated, this *ad hoc* instrumentalization consists precisely of the possibility that control agents have to use these tools in an interchangeable way, aiming to achieve that which allows them to accomplish the highest possible levels of effectiveness. Moreover, this way of operating has contributed towards generating the conditions that have favored the fusion between immigration and criminal law, allowing both the selectivity of its operators and the opacity of their actions. However and despite its global influence, Brandariz (2021b) acknowledges that there is not a common pattern to all scenarios and that, at least for the European context, far from being *ad hoc* for each particular case, the end result is to prioritize migratory control measures. Thus, what is identified as *crimmigration instrumentalism,* would present a series of advantages for control agencies, such as reducing the workload, avoiding costly criminal investigations or legitimizing efforts to prevent crime. On the whole, this set of measures reinforces the idea of ​​immigrant criminality against which social exclusion, the closure of borders, the use of force and the power to punish, appear as a natural and obvious response. Thus, as Franko (2020) summarizes, under these control dynamics, immigrants are no longer considered as people who need protection or as potential sources of labor, but rather have been transformed into transgressors and criminal offenders, that is to say the *“other crimmigrant”.*

# Historical background of border control in Chile

Despite how groundbreaking many of these transformations might appear, migration policies that have sought to control and restrict the mobility of foreigners have a long history in Chile. In fact, the first formal migration regulation in the country dates back to 1918, with the aim to prohibit the entry of 'undesirable elements'. The 'undesirable' or 'unadaptable' people were those foreigners convicted or charged with common crimes, who did not have a profession or could not practice their occupations to earn a living, and those who, by any means, propagated doctrines that were incompatible with the “Spiritual Unity of the Nation”. Likewise, Law 3,446, included the impediment to enter or reside in the country of those people who might alter the social, political or economic order of the Nation (Lara Escalona, ​​2014; Plaza Armijo & Muñoz Cortés, 2013).

Additionally, and given the health emergency caused by the 1918 flu pandemic, said regulation included in its first article the impossibility for anybody who suffered from any of the diseases listed in the Health Code of the time to enter or reside in the country (Durán Migliardi & Thayer, 2017; Norambuena et al., 2018). Since then, the successive regulations of the years 1953 (Decree in Force of Law 69), 1975 (Legislative Decree 1094), and the New Immigration and Foreign Nationals Act of April 2021 (Law 21.325), have explicitly provided for the obligation to expel and prevent the entry to people who suffer from a determined list of diseases.

The situation prior to the COVID-19 pandemic in Chile already included various measures that complicated the administrative processes to enter, reside and stay in the country. It is important to note that during the military dictatorship (1973-1990), the number of foreigners residing in Chile reached an historic low, representing less than 1% of the population (Tapia Ladino, 2012). However, and following the transition to democracy, an increase in immigration flows was observed, part of various migratory processes in the region, which were administered rather ambivalently by the successive post-dictatorial governments. As the Undersecretary of the Interior, Belisario Velasco, stated at the time, it was precisely from 1988 that the number of foreigners arriving in Chile began to show a sustained increase, "attracted by the benefits of the prevailing system in Chile" (El Mercurio, 1991, p.1).

Indeed, along with the waves of Chilean nationals who returned from exile during the early 1990s (Llambias Wolff, 1993; Martínez, 1997), there was a progressive arrival of international migrants, who were mostly from other South American countries, in concordance with the intense process of acceleration and diversification of intraregional migratory flows that were observed in Latin America and the Caribbean at the time. Such was the case of the Peruvian nationals, who, despite the historical presence of foreigners in the northern border regions, began moving towards the center of the country in search of job opportunities in the areas of commerce and services (Solimano & Tokman, 2006). From then on, and during the first decades of the new century, Chile began to receive intra-regional migrants from non-bordering South American countries, especially Ecuador and Colombia. Some estimations show that while the number of Ecuadorians doubled between 2005 and 2014, there was a fivefold increase in the number of Colombians, with just these two groups representing 10.8% of Chile’s foreign population (DEM, 2016). Following this and during the last decade, migrants and refugees began to arrive from Caribbean countries such as Haiti, Cuba and the Dominican Republic. While more recently, an intense process of human mobility has been observed emanating from Venezuela, with a flow that began around 2015 and has steadily increased since then. As official figures show, even though the 2017 Census recorded a total of 83,045 Venezuelans. (National Statistical Institute-INE, 2018), the subsequent updates show that their presence increased notably during the years 2018 (334,386), 2019 (441,495) and 2020 (448,138) (DEM, 2021; INE-DEM, 2020, 2021).

What then would be the response of the Chilean State faced with a scenario of growing and changing migratory flows? According to Norambuena (2013), it is possible to observe a certain progress in terms of migration management during the post-dictatorship governments up until 2010. In this regard, he explains, the regularization processes carried out under the administrations of Eduardo Frei, in 1998, or Michelle Bachelet, in 2007, are usually the ones referred to (Stefoni, 2011b). Likewise, some pivotal events are mentioned, such as the ratification of the Palermo Convention and its complementary Protocols in 2004, as well as the publication of Refugee Law 20.430 in 2010, along with the promulgation in 2005 of the International Convention on the Protection of the Rights of all Migrant Workers and their Families. Furthermore, and in 2008, President Bachelet issued Presidential Instruction 9, which regulated migratory movements and provided specific actions for the protection of such peoples (Norambuena, 2013). In short, during this first period it was possible to observe a series of welcoming initiatives and policies to open up migration, providing guarantees of admission, rights and protection.

However, this greater formal opening towards international migration was also accompanied by increased restrictions regarding some specific mobilities, with an increasing enforcement of control and surveillance mechanisms. Indeed, the statement made by Undersecretary Velasco in 1991 regarding the presence of a greater number of foreigners in the country was accompanied by the announcement of a significant increase to the Immigration Department’s budget. In his own words, these greater resources would make it possible to conduct a " strict control of foreigners", for which a computer system would be implemented and oriented not only towards the "facilitation of visa and residence procedures", but also towards being able to "take better control about who enters Chile and what activities they carry out” (El Mercurio, 1991, p. c1).

Thus, from the decade of the 90s onwards, a highly contradictory migration policy took shape in Chile, which could be summarized as a policy that: says what it does not do and does what it does not say. On the one hand, even when it states the need to defend and promote migrants’ rights by adopting a series of instruments and intergovernmental forums, the strategy is quite questionable if you take into consideration how it was actually implemented. Certainly, and as discussed in several investigations (Stefoni & Stang, 2017), the situation of the foreign population was highly precarious and marked by a series of barriers to access basic social services, a strategy, summarized by Stefoni (2011a) as "the policy of the non-policy”. On the other hand, as various news reports show, during those first years, the migration laws would be applied discretionally and selectively to control people or specific cases. Throughout the 1990s, deportation was effectively imposed only in cases of high public connotation, as for example, on members of a Peruvian sect accused of polygamy and other crimes of a sexual nature, and who were expelled for "acts against morality and good customs" (El Mercurio, 1996, p. c9). Consequently, and despite their greater public notoriety, cases like this were still isolated and specific, which shows a period in which control devices played a secondary and exceptional role in regulating migration flows.

# Border securitization and the production of irregularity in Chile 2010-2019

Since the turn of the century, measures such as deportations have become increasingly more frequent and relevant within migration policy. As shown in the data in Figure 1, in addition to being applied in exceptional cases, during this period there was also a considerable increase in expulsion orders. An important turning point in Chilean politics, in which many aspects would change in terms of migration and border control, corresponds to the victory of the right-wing in the presidential elections at the end of 2009. Grouped in the Alliance for Chile, headed by former President of the Republic, Sebastián Piñera, the right leaning parties implemented a punitive agenda in terms of migration control, which acquired much more force during their second four-year term from 2018 to 2022. These changes in the political arena had an impact in the trajectory of migration policy, employing a discourse that did not recognize the right to migrate, which became clearly evident when the Chilean government refused to sign up to the Global Compact for Migration (the Marrakech Pact) in 2018, and took steps to impose mobility restrictions on certain nationalities that were subjected to control. In short, far from welcoming and promoting the integration of the thousands of foreign nationals who arrived in Chile during this period, the emphasis was placed on restrictions, lack of protection and criminalization of certain migrant groups.

Under the repeated discourse of a safe, orderly and regular migration, the government began to implement a series of mechanisms and instruments oriented to restricting the mobility, especially of nationals from Haiti and Venezuela (Ramos and Tapia, 2019; Dufraix et al., 2020). This can be verified by the reinforcement of border controls since 2011, especially in the northern zone of Chile. Within this context, the launch of the Northern Border Plan 2011-2014, with the purported aim to fight crime and drug trafficking in the far north of Chile (García Pinzón, 2015), led to a greater deployment of human and material resources on the border, as provided for by this policy. In fact, according to the final audit report issued by the Comptroller General of the Republic (2014), the Northern Border Plan allocated more than five million Euros for the acquisition of X-ray equipment, fiberscopes, densitometers, thermal cameras, night vision devices and drug incineration furnaces. Also, this Plan enabled the incorporation of the Armed Forces as an auxiliary but relevant actor in the area of border control, which until then had been the exclusive responsibility of the Chilean police. This approach to control would progressively expand during the decade, through the creation of the Safe Border Plan, which basically extended the questioned Northern Border Plan to all five regions of northern Chile (Ramos et al., 2021).

Furthermore, during the last decade there was also a notable expansion in migration control, with the introduction of a series of restrictions for migrants to regularize their status. As clearly shown in Figure 1, the administrative expulsion orders increased sharply towards 2020. Despite the slight differences observed between the data presented by Galaz, Rubilar and Silva (2016) and the data obtained directly from the Under-Secretariat of the Interior via the Law of Transparency (Dufraix Tapia et al., 2020), the graph allows us to splice two time-series, which together, accurately describe a trend in the application of expulsions between 2005 and 2020[[1]](#footnote-1). As can be observed, up until 2015 the average number of expulsions per year remained relatively constant at around 2,200, which shows a limited capacity of the State bureaucracy to manage the flow of infractions and administrative sanctions. However, as of 2016 there has been a sustained growth in the number of people receiving expulsion orders, with an annual increase recorded of between 12% to 16% during the three years up to 2018, to stand at 3,307 expulsions. This upward trend continued at a relatively constant rate, with the exception of 2019 when expulsions tripled compared to the average for the previous decade, reaching 6,702; this represented an unprecedented figure in the history of migration control in Chile.

**Figure 1**

**Administrative deportation orders in Chile (2005-2020)**

Gráfico, Gráfico de líneas

Descripción generada automáticamente

Source: Own elaboration based on data from the Under-Secretariat of the Interior and Galaz et al. (2016).

This trend in the number of expulsions can be better understood by focusing on the context in which such variations occurred. Firstly, after the rise in the expulsions between 2005-2007, a slight increase can be noted in the expulsions decreed during 2014. A large part of this rise could be the consequence of the imposition of consular visas on citizens from the Dominican Republic in 2012. This measure, based on the idea that migratory flows can be addressed or stopped through administrative mechanisms, far from discouraging the arrival of Dominican nationals, ended up dividing the migration flow between those who could access regularity and those who could only enter through unauthorized bordering crossings (Galaz et al., 2017). In effect, after representing a marginal proportion in the historical total of deportations, from 2012 onwards there was a sharp increase in the number of expulsions of Dominicans. For example, while for the 2010-2012 period there were 12, 31 and 27 expulsions issued for the respective years, the rate of expulsions witnessed a dramatic increase from 2013 onwards, reaching almost 900 deportation orders by 2017. This is reaffirmed by Galaz et al. (2016, p. 6), who recognize that "as from the imposition of the consular visa requirement, the number of expulsions decreed begins to increase, as does the representation of Dominican Republic nationals in the total number of expulsions decreed”.

Secondly, the sharp increase during the years 2018-2019 can be explained by two different processes, which are interconnected and occurred simultaneously in terms of migration control. One of these processes is related to the measures announced in April 2018 which, among other things, included a series of modifications in the entry requirements for groups of specific nationalities. An example of this was the case of Haitian nationals and the imposition of a consular tourist visa, while at the same time they were granted a family reunification visa for spouses, civil partners, minors or children who were studying until the age of 24, which even allowed access to permanent residency after 12 months (Ministry of Foreign Relations, 2018). Furthermore, in the case of Haiti, the strategy considered a Humanitarian Plan for Orderly Return, which consisted of voluntary return flights, but included a clause that prohibited their re-entry into Chile for nine years, one year less than the ten years of no-return imposed by legal expulsions.

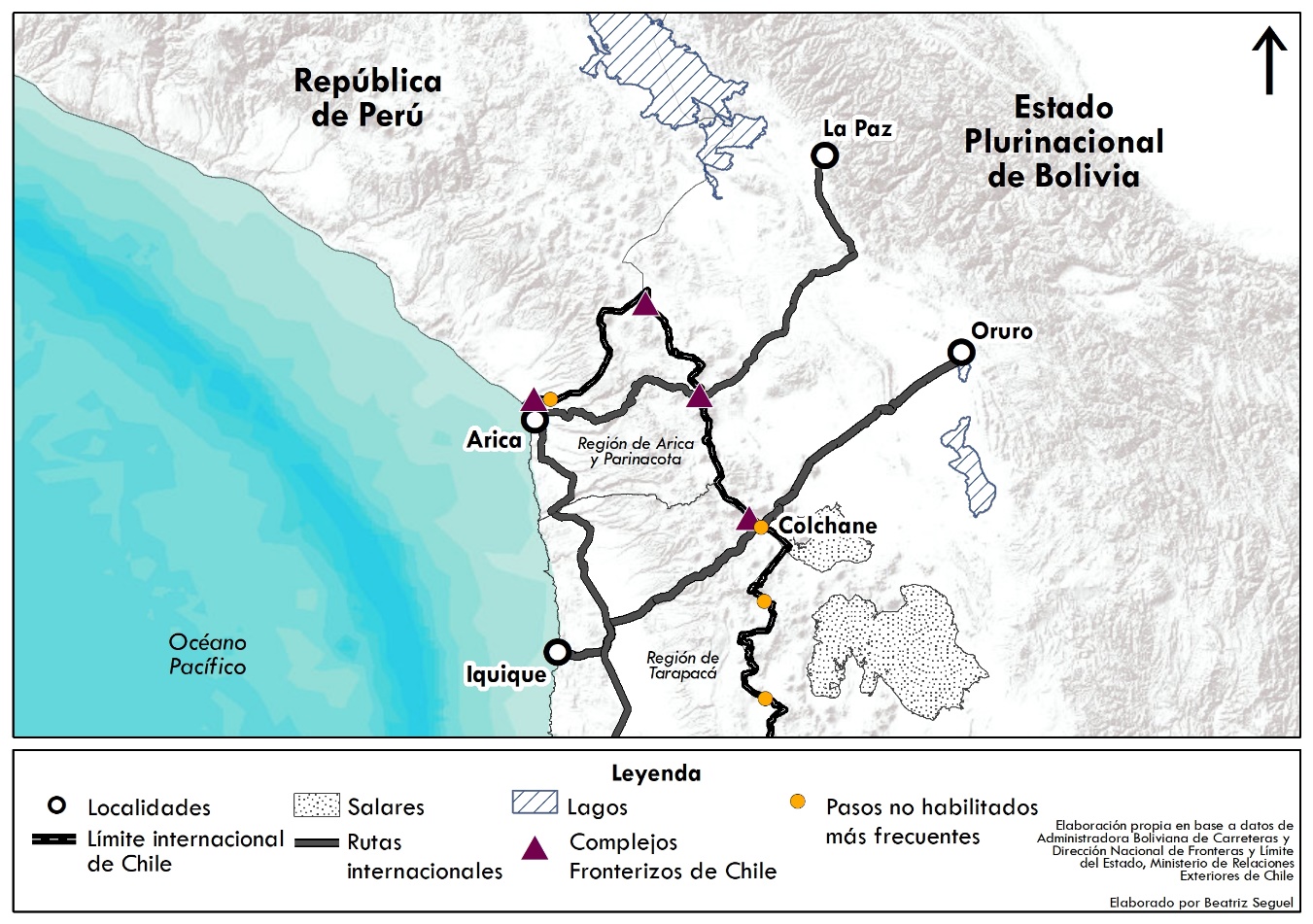
The other process that explains the explosive increase observed in 2019 is mainly related to the State response when managing the Venezuelan migration flow. As expected, and given the scenario of social and political crisis in Venezuela, the State initially opened the country’s doors to those who wanted to settle in Chile. In a well publicized visit by President Piñera in 2018 to Cúcuta in Colombia, a city located on the border of Táchira-Norte de Santander, the Head of State made an invitation for all those who wished to settle in Chile, announcing the creation of a special visa for this purpose, the Democratic Responsibility Visa. Basically, this visa was to be requested at Chile’s foreign Consulates and allowed the holders, family members and dependents to acquire "a temporary residence permit for one year, extendable just once and [with] the possibility of obtaining Permanent Residency” (Ministry of Foreign Relations, 2018, p. 2). However, from the data presented by the Jesuit Migrant Service (2021), obtained directly from the Undersecretary of Foreign Relations, of the 441,253 Democratic Responsibility Visas requested between April 2018 and June 2021, only 61,096 were granted (13.8%) while the remaining 376,720 (85.4%) were simply rejected.

The aforementioned coincides with the second moment that is identified in the trajectory of the migratory policy response to Venezuelan immigration. Following the decision of Peru and Ecuador to impose visas issued at their consular bureaus abroad for Venezuelan nationals (Brumat, 2021), Chile decided to also adopt this policy and in the same week imposed the same requirement. As can be read in the sole article of Decree 237, of June 20, 2019, "every Venezuelan citizen who wishes to enter the country, without the purpose of immigration, residency or undertaking of a paid occupation" must obtain a "Consular Visa for Basic Tourism with the right to enter and remain in Chile in such a capacity, for a maximum period of 90 days” (Ministry of the Interior and Public Security, 2019, p. 2). In practice, however, and despite the fact that the same decree admits in its sixth item that "the stay in Chile, beyond the time provided for tourists, is a situation that exposes migrants and their families to violations derived from their irregular situation in the country” (Ministry of the Interior and Public Security, 2019, p. 1), the results once again show a massive rejection of such applications. According to the Jesuit Migrant Service website (2021), 9 out of 10 applications were denied, with only 11.5% (11,117) of the 96,480 applications submitted between June 2019 and June 2021 receiving the tourist visa.

Taken together, these measures resulted in an exponential increase in expulsion orders issued against Venezuelan nationals, rising from just 5 such decrees in 2017 to more than two thousand between 2019 and 2020 (Dufraix Tapia et al., 2020). Moreover, the available data allow us to corroborate that the sharp increase in the number of deportations ordered, which mainly affected Venezuelans, coincides with the location where the first major crisis occurred in June 2019, linked to the change in requirements for those entering the country as a tourist.

This location corresponded to the region of Arica and Parinacota, a bi-border area of ​​intense mobility that is located in the far north of Chile, and which boasts the highest number of authorized land entries registered at the national level (Tapia et al., 2017).

**Figure 2. Map of the border area of ​​the far north of Chile**



Source: Compilation based on information supplied by the Ministerio de Autonomías de Bolivia: Administradora Boliviana de Carreteras y Dirección Nacional de Fronteras y Limites del Estado, Ministerio de Relaciones Exteriores de Chile. Produced by Beatriz Seguel.

And it was precisely on the Arica-Tacna border where the first critical moment in the history of Venezuelan migration to Chile took place, which was directly linked to the increase in the expulsions issued by the Arica and Parinacota Regional Administration, which passed from an annual average of 667 expulsion orders between 2010 and 2018 to 3,126 expulsion orders during 2019.

According to Isaldo Bettin, a member of the Chilean Catholic Migration Institute in Arica, these sudden changes to the entry requirements resulted in people "stranded" between the Santa Rosa (Peru) and Chacalluta (Chile) border posts: "There are two highways, one heading to Peru and another in the direction of Chile. In between, there is a space, and there they remain (...) they use blankets to protect themselves from the sun and the cold, and there they stay” (Olavarría, 2019, p. 1).

Thirdly, the unprecedented increase in deportations issued in 2019 must also be understood as the result of another measure adopted within the context of migration governance: the 2018 Immigration Regularization Process. Formally, this process sought to resolve the situation of all foreigners with an irregular immigration status, and who had entered the country prior to April 8, 2018 (Ministry of Foreign Relations, 2018). Although this group was originally estimated to be at least 300,000 people, only 155,707 applications were submitted and 131,399 visas were issued, mainly to nationals of Haiti, Venezuela and Peru. However, in practice only 90,000 visas could actually be stamped due to a number of impediments, problems and difficult-to-fulfill requirements, such as the obligation to obtain an apostille criminal record certificate (Dufraix Tapia et al., 2020), the excessive delay in the issuing of the residence permits, inadequate information strategies during the implementation of the measure, and the impossibility to access formal jobs while the applications were being processed (Valencia and Ramos, 2021).

Thus it is worth noting that although the process allowed thousands of people to access administrative regularity, it also implied the irregular status of all those who could not obtain a visa stamp or meet all the requirements. This situation was manifested by the 12,000 people whose regularization requests were rejected and who were automatically issued with a standing expulsion order, thus perpetuating their permanent condition of deportability.

Finally, even though deportations were showing an upward trend since the 2014-2016 period, the most significant increases were observed after the measures announced in April 2018. Paradoxically, while the number of expulsion orders rose, the expulsions that actually occurred decreased, producing a significant deportability gap (Brandariz, 2021a)[[2]](#footnote-2). As shown by Dufraix et al. (2020), if during the period 2010-2015 approximately 4 out of every 10 expulsion orders were implemented, that percentage dropped to levels below 10% between 2018-2020. In short, all of the above shows the configuration of a deportation policy, which beyond the organizational capacity that it exhibits in terms of the administrative process of each case, has left a high percentage of expulsion orders issued unexecuted. Based on the above, it is possible to note that far from regularizing, registering and “ordering the house”, these security policies have ended up producing the irregular status of thousands of migrants, exposing them to greater risks and worse living conditions. Thus, and although constructed on the basis of ​​an orderly, safe and regular migration, this strategy ended up generating a total of more than twenty thousand unexecuted administrative expulsions between 2010 and 2019, thereby perpetuating a situation of irregularity that intensifies "the condition of vulnerability of thousands of people who will not be able to access State protection” (Dufraix Tapia et al., 2020, p. 18).

Generally speaking, the analysis presented up to here allows us to reconstruct the recent and contradictory past of Chilean migration policy, which can be very useful for understanding the most recent mutations in this matter. As can be observed, these control policies “with a human face” (Domenech, 2013) include contradictory measures that, discursively legitimized by a narrative of humanitarian and rights protection (Ruiz and Álvarez, 2019), end up strengthening the control and surveillance devices at the country’s borders, while at the same time conditioning and restricting access to regularity (Stang et al., 2020). In this sense, we believe that the Chilean State has opted for a trend in migration management identified by De Genova (2017), as a legalized production of migratory irregularity, where the border, and its "externalized perimeter" (Alvarez, 2016:161), has been key in the domain of migration management. The foregoing makes it possible to describe, as we will see below, how the effects of this form of migration management are not only reduced to the expulsion of "non-citizens" and practical consequences in terms of the efficient management of racialized migrants, culturally constructed as "undesirables", but also to "keep them under extreme control, exclusion and extreme vulnerability, and always with the possibility of banishing them when necessary" (Aquino, 2015:77).

1. **Border control mutations during the pandemic: self-incrimination, detention and pushbacks**

In February 2021, with borders closed due to the pandemic, the small village of Colchane became the center of national and international attention. Colchane is a border village located in the Andean highlands at 3,650 m.a.s.l, with fluctuating temperatures that can drop to -8ºC at night. It was founded in 1970 as part of a strategy oriented to “establishing a permanent settlement and to control the border" (Municipality of Colchane, 2015, p. 6). This rural commune forms part of the ancestral Aymara territory, which was partitioned after the War of the Pacific (1879-1883). In the 2017 Population and Housing Census, the village registered only 1,728 inhabitants (INE, 2018). However, between the end of 2020 and February 2021, thousands of Venezuelans arrived in a context of clandestine migratory transit (Ramirez and Álvarez, 2009; Álvarez, 2009), entering the country through non-authorized border crossings. At its peak, the number of migrants far outnumbered local inhabitants (Paredes, 2021). A Venezuelan woman who entered through a non-authorized crossing and was in Colchane told the local press: “I am here with my husband, we left our three children in Venezuela. I came here looking for a better future (…) we decided to embark on this risky journey, but nothing has been like we were told. It’s been horrible.” (Soy Iquique, 2021, p. 1)[[3]](#footnote-3) During this period the situation in the village took a dramatic turn for the worse, with hundreds of families with their children searching for water, food and a place to sleep and to escape the cold (Cociña et al., 2021).

In response to the humanitarian crisis in the Chilean highlands, the authorities responded at different levels and through various actions. On January 27, for example, an appeal for judicial protection was filed against the Chilean President, the local mayor, and the Interior and Defense ministers, for illegal and arbitrary omissions in safeguarding the population against the health threat posed by the mass transit of foreign nationals through unofficial border crossings (Rol 25529-2021). Then, on February 2, and despite the disturbances between migrants and the police, the government claimed that the situation was under control and that all public services in Colchane were working normally, referring specifically to the Carabineros (Chile’s national police force), the PDI (Chile’s investigations police force) and the Armed Forces (Meganoticias, 2021a). A week later, on February 9, the ministers of the Interior, Defense and Foreign Affairs visited the area and together with the mayor and senator of the region, announced the creation of the "Colchane Plan" (Cooperativa, 2021).

However, this Plan, far from providing humanitarian aid and protection, consisted of specific measures aimed at providing more resources to the police and extending the role of the Armed Forces in terms of border control and surveillance. In this sense, Decree 265/2019 was particularly relevant, as it allowed the military to assume tasks related to drug trafficking and organized crime on the border (Ministry of National Defense, 2019). This combined effort was reinforced during the pandemic through Decree 3/2021, which permitted the expansion of military support to control the smuggling of migrants (Ministry of National Defense, 2021). As can be noted in the details of this last decree, the vast territorial extension, climatic conditions and the extreme geographical characteristics of this border zone, require the reinforcement of certain border sectors in order to prevent, detect and control crimes associated with drug trafficking, transnational organized crime and migrant smuggling. Furthermore, as the document indicates, such measures would be based both on the obligation of the State to safeguard national security and protect the population, as well as on "the good results obtained from the collaboration provided by the Armed Forces in its joint interagency work in the border zones of the national territory” (Ministry of National Defense, 2021, p. 2). Indeed, between January and September 2021, control agencies detected more than 33,000 entries through unauthorized crossings, a figure that is double the number registered in 2020 and far exceeds the total for irregular crossings registered throughout the decade of 2010-2019 (Leal, 2021).

In addition to the above, the government established specific coordination with the health authority and the Municipality of Iquique to accommodate people who had arrived in the city along different routes. Indeed, during the weeks prior to the announcement of the Colchane Plan, the Head of National Defense of the Tarapacá Region sent various requests to the Municipality for the authorization to use different facilities as shelters or places to accommodate people, in order to allow them to undergo their 14-day quarantines, and thus prevent them from being left on the streets. It is worth remembering that during the pandemic, all formal transportation services between Colchane and Iquique were suspended, leaving people two options. The first was to report themselves to the police, to then be registered by the health authority and wait for one of the few buses to take them to the reception centers, where they would receive medical attention and food. The second option in order to escape the cold, the high altitude and the scarcity of food, was to negotiate exorbitant prices with informal transporters, or risk a 265 kilometer walk, crossing the highlands and desert for days on foot until reaching Iquique or some other nearby town. However, the vast majority had no other choice than agree to the condition established by the Chilean authorities so as to access health care (León, 2021).

In this context, during the morning of Wednesday, February 10, 2021, 86 Venezuelans were expelled from Chile in a Chilean Air Force flight that took off from Iquique airport. Each person was escorted to the plane by a police officer, and despite the fact that they all had a negative PCR test, were forced to wear white overalls, which they were told to put on in the airport minutes before boarding. They were then taken to the plane under the gaze of the media. They were notified of their expulsion order at the Centennial School at 3 a.m. on Tuesday the 9th and were arrested 24 hours later on Wednesday the 10th. As one of the Venezuelans deported told the press that same day (TVN 24 Hours news bulletin, video), they were expelled without the possibility of receiving legal assistance or appealing the measure. And even though fourteen of said nationals were being expelled as a result of convictions for committing minor crimes, the remaining 72 had not committed any crime; rather they had entered the country in an irregular manner. Nonetheless, in a press conference held by the Minister of the Interior at the airport, while the deportees were being put on the plane, it was stated that "this administrative expulsion includes people who entered the country less than three months ago, and who entered clandestinely through irregular crossings, all of which makes them, obviously, subjects of expulsion” (Rodrigo Delgado). However, their only mistake was having trusted that going to the police would eventually allow them to regularize their immigration status in the country, without knowing that in Chile, anyone who reports themselves to the police in such circumstances always ends up receiving an expulsion order. As one of the expelled Venezuelans who had crossed the border at Colchane regretfully noted: “the police told us that it was best to report ourselves because that would lead to a regularization process. I did everything they said voluntarily. My pregnant wife is staying at a shelter right now and they’re expelling me. The only thing I ask is that she can travel back with me.” (Meganoticias, 2021b, p. 1)

Two months later, on Sunday April 25, another 55 Venezuelans were expelled, again wearing white overalls. Forty of them had reported themselves to the police for entering via non-authorized border crossings and were notified of their expulsion while held in the former Cavancha Stadium, which at the time operated as a temporary Health Reception Shelter after the modifications introduced to the Covid-19 protocols in March. This new expulsion started on Friday, April 23, at six p.m., when dozens of officers from the PDI burst into the precarious health facilities set up next to a soccer field, handing out deportation orders. Once again there was no access to legal assistance or appealing the measure, and these people were then arrested on Saturday 24th and transferred to a police station, where they were held in the auditorium, their mobile phones confiscated, until the next morning. In spite of all these communication barriers, on the Saturday afternoon, and in coordination with certain local organizations, some migrant legal support groups managed to file a writ of *habeas corpus* in favor of 15 people, which would be heard in a special session by the Court of Appeals of Iquique during the morning of Sunday 25th (Rol 209-2021). However, despite the imminent threat of waiting on the airport runway, the petition to quash the expulsion orders requested by the applicants was rejected. The plane was thus permitted to take off at around 1:00 p.m. on a non-stop flight to Maiquetía airport in Venezuela.

Along with the similarities between both flights, the latter represents a second important turning point in the history of migration control deployed during the pandemic. For this would be the first time a private charter flight had been used in Chile for the purpose of expulsions, thanks to a service that the government had been trying to tender unsuccessfully since October 2020, even before announcing the so-called Colchane Plan. Afterwards the Foreign Minister stated: "Chile's response to illegal entries will be a persistent policy of administrative expulsion," for whose purpose, according to the Defense Minister, they were opening "a bidding process for private companies, which are the ones to fulfill this role” (Meganoticias, 2021b, p. 1). Such an agreement was finally made with Sky Airlines only four days before the takeoff, in a contract signed by the Undersecretary of the Interior and approved on April 21 by Decree 92/2021. According to the first clause, the service is contracted in response to the "increase in the clandestine entry of foreigners (...) through unauthorized border crossings", which has generated "a significant increase in the number of administrative expulsions by the Regional Government and consequently, a large accumulation of foreign nationals who are waiting for the expulsion measures to be implemented” (Ministry of the Interior and Public Security, 2021, p. 2). Likewise, the document established a maximum budget of USD1.6 million to carry out at least 15 such flights, whose final destination would be countries of South and Central America with a maximum capacity of 180 passengers per flight, consisting of those being deported and security escorts.

Furthermore, this second process also stands out for the modification made to the maximum time of detention to execute expulsions, which was established that same week. In this respect, on Thursday, April 22nd, 2021, the Minister of the Interior and the Director of the Investigative Police signed Exempt Decree 1128/2021, which extended said period from 24 to 48 hours. As described in the document, the decision took into special consideration the health alert implemented in the country and the Constitutional State of Exception that allowed the closure of borders, thus affecting both free movement across the borders and the carrying out of expulsions (Ministry of the Interior and Public Safety, 2021). This led to verbal instructions being given that same day to several control agencies, although the document was not officially processed until Monday, April 26 (Rol 206-2021). However, this delay was crucial as it permitted the detention to be declared illegal and the cancelling of the expulsion orders for 31 people in the city of Arica. These people had been detained on Friday 23, and were to be transferred to Iquique airport and put on board a flight scheduled for Sunday 25th of April (Rol 142-2021). As stated in the presentation of the appeal, despite the fact that all these persons had roots and family ties in Chile, the Investigative Police had arrested them on the Friday when they were simply fulfilling their obligation to report to said police, at which time their identity documents and mobile phones were confiscated.

Based on these regulatory and operational modifications, at least four other flights with similar characteristics took off during 2021. However, as a result of the various judicial, media or political interventions carried out by social and academic organizations, among other actors, the control agencies were forced to modify some of their strategies. In this regard, for example, the action presented by the Public Criminal Defender of Tarapacá stands out in response to the probable illegal detention of those who already met the requirements to leave the quarantine facilities, which consisted of having a negative result of a PCR test taken 5 days after their arrival at said Transitory Health Lodgings. At the same time, legal practices, social organizations and activist lawyers based in the region, filed various judicial demands to denounce the illegal and arbitrary nature of the collective expulsions in progress. Although, for several reasons, many appeals were not accepted, others effectively forced the State agencies to be transparent with their protocols and modify their criteria for implementing them. In this respect, it is worth mentioning, for example, the flight scheduled for Sunday, May 9, which was eventually cancelled, as the National Institute of Human Rights pushed strongly for the release of people who had been arrested in their own homes, even though judicial rulings had been issued that had revoked their expulsion orders.

However, and as a result of the situation we have described, nearly 200 people were deported on these flights during the year 2021, the majority Venezuelan nationals, who never had the chance to request asylum, or apply for a visa, or even obtain fair treatment or due process during the processing of their expulsion orders, a situation that has been denounced by social organizations, international agencies, and academia, among others. Moreover, and with a couple of exceptions, most of the writs of *habeas corpus* filed against these measures have been excepted by the Courts of Appeals or failing these by the Supreme Court, although almost always after the person concerned had been deported. Ultimately, this and all the discretionary measures adopted during this period have contributed to tightening the mechanisms of control and surveillance, but have not managed to stop the flow of migrants into the country. On the contrary, the strategy deployed has not only resulted in an unprecedented crisis and serious violations of the human rights of migrants, but has also claimed the lives of at least 18 people who have been forced to take more dangerous routes (TVN, 2021), including "a nine-month-old baby who stopped breathing after crossing the border with her family" (La Tercera, 2021, p. 1).

# Final remarks

The increase in intraregional immigration that Chile has experienced in recent decades has been managed based on a punitive, exclusive, and selective agenda of migration governance, influenced by racial, sovereign, and political factors. As has been seen, the Chilean migration and border control system already presented some conditions that pointed to a hardening approach (prior to the pandemic). After the return to democracy in 1990, the post-dictatorship governments gradually developed a contradictory model of migration policy that proclaimed more rights, but in practice increasingly restricted access to processes of regularization. Then, with the turn of the new century, immigration flows started to increase sharply, but accompanied by restrictions imposed on entering, circulating or residing in the country. As a result, and except for some tepid modifications made during the second administration of the socialist Michelle Bachelet, between 2014 and 2018, this way of considering migration and mobility management would intensify significantly during the second Piñera government, between 2018 and the 2021.

Thus, during this period, a political model was built that, contrary to the discourse of order, security and regularity that was declared, in practice produced and perpetuated disorder, insecurity and undocumented migration. Here, the series of restrictions deployed by the Chilean State to prevent the regular entry of foreigners and thereby amplify their “subordinate inclusion” (Melossi, 2018) and vulnerability stand out. Among these measures are the imposition of new visas, the delay and subsequent rejection of a significant proportion of visa applications, the barriers to requesting and accessing refugee status and, more recently, the closure of land border crossings as part of the health strategy in response to the pandemic. As a consequence, during the last decade the number of people who were denied the option of entering the country regularly, or of regularizing their immigration status, increased considerably, which also produced an increase in the number of people who have been detected entering through unauthorized border crossings, reaching its historical maximum during the pandemic.

Faced with this scenario, the reorganization of Chilean immigration and border control experienced during the pandemic allowed the border limits and their logic of surveillance to be extended into the interior of the national territory. As has been observed, despite the difficulties that the State had to prevent entry through unauthorized crossings, particularly of Venezuelan citizens, the renewed registration and control strategy that was founded on the basis of "self-reporting to the police" generated a favorable scenario for the implementation of administrative expulsions. Other modifications were also relevant in this sense, such as the increase in the legal period of detention, the hiring of commercial flights to carry out deportations or the presence of the military at the borders. Likewise, the implementation of Transitory Health Lodging materialization of expulsions prohibited by international law (collective expulsions), but also the reinforcement of the misconceptions that revolve around the idea of ​​irregular migration (Dufraix et al 2022 in press). In fact, and at a symbolic level, the measures implemented by the Chilean State constituted an authentic "border media show" (De Génova, 2017: 158) that was carried out through the dissemination of mass expulsions of foreigners dressed in white overalls, thus transmitting a message of efficiency and effectiveness, but which certainly did not find a correlation in the available data (Mascayano and Vergara, 2022). All this underlines a control strategy that, along with adapting to the context, finds its greatest strength in the messages it disseminates around the "*other crimmigrant*" and that lead to the generation of a collective consensus that manages to divert attention away from the real problems (the violation of human rights, economic recession, corruption, the increase in violence in general, etc.).

Despite the aforementioned, it is important to recognize that civil society promoted various strategies and resistance mechanisms that emerged for the protection of the human rights of migrants subject to control in the context of a pandemic. Although this area was not the subject of analysis in this chapter, these collaborative practices that made it possible to counteract the measures applied by the State, on the basis of collaboration and civil protection, undoubtedly represent an important field of research to investigate in the future.

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1. The differences are mainly due to the fact that in their Report they counted "people with expulsion orders", while the request to the Undersecretary of the Interior was for the number of "administrative acts that impose expulsion", which may eventually consider more than one person. [↑](#footnote-ref-1)
2. This gap between the expulsions issued and the expulsions executed reached its greatest distance in 2020, with barely 5% of effectiveness. Specifically, of 4,006 expulsion orders issued, only 202 were executed (Dufraix et al, 2022 press report). This low effectiveness can be explained, in part, by the border closures caused by the pandemic and the difficulties in the registration that occurred because of undocumented people. [↑](#footnote-ref-2)
3. Digital newspaper Soy Iquique (I am Iquique)*.* (February 4, 2021). [VIDEO] The crude testimony of a Venezuelan woman in Colchane: "We were deceived." Soychile.cl. https://www.soychile.cl/Iquique/Sociedad/2021/02/04/692684/VIDEO-Crudo- [↑](#footnote-ref-3)