

Haitians in limbo – Legal responses for migration induced by the 2010 Haitian earthquake on the American continent

VALÉRIA HORVÁTH

Assistant lecturer, National University of Public Service Faculty of State and International Studies, Department of International Law

The way and the extent to which environmental degradation contributes to the most recent migration trends and refugee crises has so far been under researched. It is precisely the multidimensional quality of human security that is not reflected adequately by most immigration laws, which prescribe oversimplifying legal categories for the complex circumstantial situations that life on earth produces. Although the Cartagena Declaration on Refugees of 1984 calls for the signatories to add—among other legal grounds—„other circumstances which have seriously disturbed public order”, none of contracting states actually enacted any relevant legislation. This paper collects and reflects on the legal responses to the influx of Haitian migrants following the earthquake in Port-au-Prince, Haiti in January 2010 provided by countries on the American continent.

Keywords: environmental migration, disaster management, immigration, asylum

1. Introduction

On 12 January 2010 Haiti was shaken by the single most severe earthquake ever recorded in the island's history. The earthquake occurred 25 kilometres from Port-au-Prince and for another week, more aftershocks shook the western part of the island, which were felt even in Cuba and Venezuela.¹ The capital and its surrounding areas lie right at the confluence of two rock plates and is a swampy area, crossed by rivers running into nearby estuaries.² The rate of annual deforestation in the region is 3%, which can be traced back to historical and political reasons as well as current local energy needs. Due to its natural resources, the sudden opening of markets and outdated agricultural practices, Haiti is one of the most insecure countries in terms of food security, just ahead of the Democratic Republic of the Congo and Eritrea. Although the country is regularly affected by natural disaster—such as floods, droughts, earthquakes, extreme storms—due to its turbulent colonial past and subsequent civil wars, the country's resilience and disaster protection are virtually non-existent. This particular natural disaster affected around three million people, in a country which is the poorest in the Western Hemisphere. It is estimated that a quarter of a million people lost their lives, three hundred thousand were injured and one and a half million were forced to seek refuge in camps set up for those displaced.³ Consequently, a cholera epidemic also broke out in

¹ This day: Massive earthquake strikes Haiti <https://www.history.com/this-day-in-history/massive-earthquake-strikes-haiti> (7 December 2020).

² Overview of the Haiti Earthquake <https://escweb.wr.usgs.gov/share/mooney/142.pdf> (20 December 2020).

³ World Vision: 2010 Haiti earthquake: Facts, FAQs and how to help <https://www.worldvision.org/disaster-re>

Haiti in October 2010.⁴

The way and the extent to which environmental degradation contributes to the most recent migration trends and refugee crises is currently under research. Considering the case of Haiti, according to Audebert, it can be established that the demographic pressures on scarce land resources in rural areas as well as the extension of erosion aggravate the living conditions among agricultural workers which is then coupled with rudimentary agricultural practices. These eventually lead to the contraction of arable land and the reduction of agricultural resources. This directly causes the impoverishment of masses, which, if not met with adequate political will to resolve the situation, may cause social tension and even violent conflicts. Moreover, climate change causes extreme weather conditions which makes certain areas in the world such as Haiti extraordinarily vulnerable to environmental disasters. Additionally, taking into account the colonial exploitation, the military dictatorship and the overall political and economic instability throughout the past decades, Audebert claims that all of these insecurities create a „multidimensional vulnerability” for people living in places such as Haiti.⁵ Consequently, immigration authorities face quite a challenge when trying to legally distinguish asylum-seekers from economic migrants.

In this article I will not focus on the causes but on the consequences: the wave of human mobility experienced after the earthquake and the legal responses to accommodate the influx of Haitians given by the countries of destination. It is estimated that there were as many as 700,000 displaced in Port-au-Prince alone. Almost 600,000 are thought to have had to relocate to areas outside the capital. Displaced populations and migration was a challenging issue both within Haiti (with more than 1.2 million people displaced) and internationally, as people were leaving Port-au-Prince for unaffected rural areas, as well as the Dominican Republic, North America as well as South America.⁶ Additionally, I will also mention some trends in secondary movements of Haitians relocated in Central and South American countries, to display the spill over effect of displacement caused by natural disasters.

It is precisely the abovementioned multidimensional quality of human security that is not reflected adequately by most domestic immigration laws, which prescribe oversimplifying legal categories for the complex circumstantial situations that life on Earth produces. Throughout the 20th century with the introduction of the paradigm of human rights protection by the signature of the UN Charter, when domestic laws failed to provide protection to the affected communities, the international community stepped up and showed solidarity. When dealing with displacement in Latin-America and the Caribbean, one must assess the possible application of the following international conventions: the 1951 Convention relating to the Status of Refugees, and its 1967 Protocol relating to the Status of Refugees, the 1969 American Convention on Human rights. In addition, possible international customary law may be evidenced by the 1984 Cartagena Declaration on Refugees, although this document lacks legally binding effect. Although the Cartagena Declaration calls for the signatories to add—among other legal grounds—„other circumstances which have seriously disturbed public order”⁷, which could include environmental factors, none of the regional contract-

lief-news-stories/2010-haiti-earthquake-facts (7 December 2020).

⁴ Planting Now: Agricultural challenges and opportunities for Haiti’s reconstruction, Oxfam Briefing Paper, October 2010 https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/file_attachments/bp140-planting-now-agriculture-haiti-051010-en_0_4.pdf (7 December 2020).

⁵ C. Audebert, *The recent geodynamics of Haitian migration in the Americas: refugees or economic migrants?*, Revista Brasileira de Estudos de População, Vol. 34, No. 1, 2017.

⁶ R. Margesson, & M. Taft-Morales, *Haiti Earthquake: Crisis and Response*, Congressional Research Service, CRS Report R41023, 8 March 2010 p. 25.

⁷ <http://www.unhcr.org/about-us/background/45dc19084/cartagena-declaration-refugees-adopted-colloquium-international-protection.html> (1 May 2021).

ing states actually enacted any relevant legislation. This eventually means that although a political declaration has been made by the countries of the American continent, it has not been backed up by state practice, therefore the assessment of the Cartagena Declaration is not a relevant source for this article.

In order to assess whether there is a need for an international convention on the protection of those displaced by natural disasters and environmental degradation, I will assess domestic immigration policies from the following two aspects: a) how prepared was the country to receive the displaced in terms of already available legal status and therefore protection, and b) how flexible were their legal regimes in order to accommodate a sudden influx of people, either temporarily or permanently.

Although this article assesses the migratory experiences of a decade old natural disaster, the relevance of the potential lessons learned is as topical as ever. Haiti remains in political turmoil with the assassination of President Jovenel Moïse on 7 July 2021⁸, and as mentioned above, Haiti continues to experience frequent natural disasters, the latest being a 7.2-magnitude earthquake in mid-August 2021⁹. Despite the fact that this year's earthquake was much less catastrophic than that of 2011¹⁰, since Haitians still face severe human insecurities, the migration implications discussed in this paper will once again prove relevant.

2. Country assessments

In the following, I will collect the legal responses of a number of countries on the American continent to the influx of Haitian migrants following the earthquake in Port-au-Prince, Haiti in January 2010. The countries that I will study and assess are the main economies of the continent. Traditional countries of destination in America include the United States of America, Canada, Mexico and Venezuela. The emergence of Brazil as a regional power, and the labour market opportunities for Haitians makes Brazil a new but significant country of destination.¹¹ The aim of the country assessments are to uncover any inconsistencies in terms of the migration management of ad-hoc and large influxes of people.

2.1. The Dominican Republic

I start my analysis with the only country with which Haiti shares a land border with. Today the island is divided between and shared by the Dominican Republic and Haiti. Historically, this division is a legacy of colonial times, therefore the relationship between the two—culturally very different—countries has been gruesome since their independence. This bloody rivalry is exactly why the Dominican Republic enacted no national special measures for Haiti nationals, even though thousands of Haiti nationals sought refuge just over the border. Although the UNHCR issued the Guiding Principles on Internal Displacement in 1999, also covering victims of natural disasters, not just violent conflicts, these do not apply to persons displaced cross-border. The Dominican Republic

⁸ <https://www.bbc.com/news/world-latin-america-57762246> (10 August 2021).

⁹ <https://reliefweb.int/report/haiti/haiti-earthquake-flash-update-no-1-15-august-2021> (15 August 2021)

¹⁰ According to the UN Office for the Coordination of Humanitarian Affairs 2,200 people have died, over 12,000 people were injured, over 53,000 homes were destroyed and 77,000 have sustained damage, meaning that over 1.4 million locals were severely affected. <https://reliefweb.int/report/haiti/haiti-flash-appeal-earthquake-august-2021> (31 October 2021)

¹¹ Audebert 2017, p. 2.

only participated in Assisted Voluntary Return programs led by the International Organisation for Migration (IOM) through which more than 1000 Haitian nationals were returned in 2011 already.¹²

2.2. Canada

Natural disasters hit immigration systems in various ways. Since the Embassy of Canada in Port-au-Prince was damaged in the earthquake, the Citizenship and Immigration Commission of Canada (CIC) had to establish an interim office, the Ottawa Haiti Processing Office (OHPO), while the Embassy of Canada in Santo Domingo, Dominican Republic took over and processed temporary resident visa applications from applicants from the Dominican Republic and Haiti.¹³

Asylum-seekers and immigrants entering Canada are entitled to various legal statuses based on the Immigration and Refugee Protection Act of 2001.¹⁴ However, since this did not provide adequate protection to those Haitians coming to Canada, on 16 January 2010, the CIC announced the Haiti Special Measures (HSM) providing „special priority processing measures for persons who self-identified as being directly and significantly affected” by the earthquake in Haiti. At the end of the procedure, the CIC provided the applicant with the appropriate document, which was either a) a temporary resident visa; b) a temporary resident permit; c) a permanent resident visa; or a negative decision. Cases not covered under HSM, were to lose priority and were to be processed at a later date. The special measures ended on 31 August 2010 but Haitian applications were still processed as quickly as possible. Moreover, by 2014, Haitians who were legally present in Canada prior to 13 January 2011 but made an application for a work permit after 13 January 2011, benefitted from exemptions based on the HSM.¹⁵ Although on August 4 2016, the HSM finally expired, HSM-holders were invited to apply for permanent residence status on humanitarian and compassionate grounds.¹⁶

Along with the HSM, a temporary suspension of removals (TSR) was also introduced. Those who were eligible to be removed, could apply for permanent residence on „Humanitarian and Compassionate grounds” on or before 1 June 2015 to remain in Canada. However, due to improved conditions in Haiti—alleged by the Canadian Government—, on 1 December 2014, the Government of Canada lifted the TSR. Thus, if a person was found ineligible to make a refugee claim, was inadmissible on criminal or security grounds, or who had been excluded from refugee protection by the Immigration and Refugee Board based on the exclusion clauses of the Refugee Convention, or who faced an outstanding criminal warrant, could be removed from Canada once again.¹⁷

Additionally, the autonomous Province of Quebec also introduced new regulatory measures to facilitate sponsorship of people who were seriously and personally affected by the earthquake in Haiti. The ‘Parrainage Humanitaire’ program allowed (Haitian) Quebec residents to sponsor appli-

¹² B. Wooding, *L'évolution des relations entre Haïti et la République dominicaine après le séisme de 2010*, Outre-terre, Vol. 1-2, No. 35-36, 2013, p. 256.

¹³ <https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/visa-immigration-services-offered-santo-domingo-port-spain.html> (1 May 2021).

¹⁴ Audebert 2017, p. 2.

¹⁵ <http://ccrweb.ca/sites/ccrweb.ca/files/haiti-zimbabwe-special-measures-jan-2015-presentation.pdf> (1 May 2021), p. 4.

¹⁶ <https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/notice-update-additional-time-given-people-haiti-zimbabwe-affected-lifting-temporary-suspension-removals-apply-permanent-residence-canada.html> (31 October 2021).

¹⁷ <https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/reminder-people-haiti-zimbabwe-affected-lifting-temporary-suspension-removals.html> (1 May 2021).

cations for a permanent resident visa for also siblings and non-dependent children over the age of 22 and their accompanying family members.¹⁸

Due to these special measures introduced by the Canadian governments, the number of Haitian asylum-seekers tripled after the earthquake between 2010 and 2014, and Canada became the world's second largest host of Haitians refugees (8,400 in total) in 2014.¹⁹ To date, however, apart from generous offers of local humanitarian aid for the victims of the 2021 earthquake in Haiti, Canada has not announced any special measures for Haitian asylum-seekers.

2.3. United States of America

The United States of America remained the number 1 host of Haitian refugees in the world during and after the 2010 Haiti earthquake.²⁰

The immigration of Haitians into the USA has always been balancing on the verge of legal and illegal, which is why as a predecessor of the Temporary Protected Status, the USA introduced a „hybrid legal category” to regulate these migrants, called the 'Cuban Haitian Entrant Status'. As suggested by its name, in 1980, the United States hoped to regularize the status of those massive numbers of Cubans and Haitians, who entered the US irregularly usually through the Florida shores by boat.²¹ Since 2000, the people on a temporary status could receive a permanent residence permit based on the 1998 Haiti Refugee Immigration Fairness Act.²² Building on the decade long experiences of immigration, within days of the earthquake, the Department of Homeland Security (DHS) was quick to react to the potential influx of Haitian people due to the natural disaster by pledging to grant Temporary Protected Status (TPS) to Haitians in the United States.

The TPS was more or less a blanket form of ad-hoc humanitarian relief, providing protection and legal status to those, who otherwise would not fit the legal definition of refugee but are nonetheless fleeing—or reluctant to return to—potentially dangerous situations. The TPS was instated by the 1990 Immigration Act, which specifies that the secretary of the DHS, in consultation with other government agencies (i.e. the Department of State), may designate a country for TPS under one or more of the following conditions: (a) ongoing armed conflict in a foreign state that poses a serious threat to personal safety; (b) a foreign state request for TPS because it temporarily cannot handle the return of nationals due to environmental disaster; or (c) extraordinary and temporary conditions in a foreign state that prevent migrants from safely returning.²³ It was the Secretary of DHS who could issue TPS for periods of 6 to 18 months and these could be extended if conditions do not change in the designated country.²⁴ Initially, the TPS for Haitians was valid for 18 months²⁵ but after the earthquake, the term of the granted TPS was extended multiple times.²⁶ In November

¹⁸ <https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/update-haiti-immigration-figures-december-31-2010.html> (1 May 2021).

¹⁹ Audebert 2017, p. 2.

²⁰ Audebert 2017, p. 3.

²¹ Audebert 2017, p. 2.; J. H. Wilson, *Temporary Protected Status: Overview and Current Issues*, Congressional Research Service, RS20844, 17 January 2018, p. 32. <https://fas.org/sgp/crs/homsec/RS20844.pdf> (31 October 2021).

²² Audebert 2017, p. 3.

²³ A state may not be designated for TPS if the Secretary of DHS finds that allowing its migrants to temporarily stay in the United States is against the U.S. national interest. Wilson p. 2.

²⁴ Ibid. p. 2.

²⁵ Ibid. p. 31.

²⁶ Ibid. p. 32.

2017, under the Trump administration's guidelines, the DHS announced its decision to terminate the TPS regarding Haiti, with an 18-month transition period and thus Haiti's designation ended on 22 July 2019.²⁷

It must be pointed out that TPS-holders were not considered to be permanently residing in the United States, they may have been deemed ineligible for public assistance by a state, and may have travelled abroad only with the prior consent of the DHS Secretary.²⁸ The TPS recipients were also eligible for federal benefits and cash assistance much like refugees. The newly arriving Haitians however were barred from the major federal benefits and cash assistance for the first five years after entry.²⁹ TPS did not provide a path to lawful permanent residence or citizenship, unlike the above-mentioned statuses, however TPS recipients were not barred from adjusting to non-immigrant or immigrant status, if they had met the requirements.³⁰

It is worth noting that on 3 August 2021, Haiti was once again designated as a country of origin for TPS. The TPS will last 18 months again, until 3 February 2023. Additionally, the termination of the 2011 TPS by the DHS has also been contested in court where preliminary injunctions order by the courts disallowed the DHS to enforce these terminations, thereby extending the designation of the 2011 TPS for the time being.³¹ This means that not only can new arrivals from Haiti stay in the US but also those people who have arrived back in 2011.

In addition to the TPS, there was another form of blanket relief from removal known as deferred enforced departure (DED), which was a temporary, discretionary, administrative stay of removal granted to aliens from designated countries. The DED is usually granted through an executive order or presidential memorandum, with no statutory basis, at the President's discretion, usually in response to war, civil unrest, or natural disasters. In 2010, the DHS also halted temporarily the deportation of Haitians from the US.³² In contrast to recipients of TPS, migrants who benefit from DED were not required to register for the status, unless they wanted a work permit. Instead, DED was triggered when a protected migrant had been identified for deportation.³³ In 2011 though, „removals on a limited basis of Haitians with final orders of removal and convicted of a serious crime, or who posed a national security threat” resumed. In 2016, the Obama administration issued a DED with immediate effect, and thus the DHS resumed, consistent with law, „the removal of convicted felons, individuals convicted of significant or multiple misdemeanours, and individuals apprehended at or between ports of entry while attempting to unlawfully enter the United States”. The deportations did not affect the TPS holders, especially if they continually resided in the US. Those who expressed a fear of return to Haiti were screened by a U.S. Citizenship and Immigration Services (USCIS) asylum officer to determine whether they possess a credible fear of persecution or torture. Those determined to have a credible fear were referred to immigration court for removal proceedings where they could apply for asylum or other forms of relief.³⁴ With the withdrawal of the DED for Haitians and the termination of the 2011 TPS, around 1,000 Haitians were deported back to Haiti in September 2021. As a result thousands have fled their camps at the US-Mexican;

²⁷ Wilson p. 7.

²⁸ Wilson p. 3.

²⁹ Ibid. p. 32.

³⁰ Ibid. p. 13.

³¹ <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-haiti> (31 October 2021).

³² Ibid. p. 31.

³³ Ibid. p. 3.

³⁴ <https://www.dhs.gov/news/2016/09/22/statement-secretary-johnson-concerning-his-directive-resume-regular-removals-haiti> (1 May 2021).

Texas Governor Greg Abbott estimated that out of the 14,000 encamped in Del Rio International Bridge only 8,600 remained. In order to flee deportations from the USA to Haiti, they are now trying to irregularly enter Mexico.³⁵

It must also be mentioned that both the governments of Canada and the USA gave priority and granted entrance on humanitarian grounds (humanitarian parole) to Haitian children who were legally confirmed as orphans eligible for intercountry adoption by the government of Haiti and who were in the process of being adopted by U.S. or Canadian residents, respectively, prior to the earthquakes.³⁶

2.4. Mexico

According to the Jesuit Refugee Service in Latin-America and the Caribbean, although the Mexican government was quick to express solidarity on a political level, president Calderón failed to keep his promise of any special legal assistance to Haitian asylum-seekers.³⁷ Haitian nationals in the aftermath of the earthquake could apply for a „regular” temporary visa on humanitarian grounds for up to 1 year, subject to renewal.³⁸

Most of the Haitians registered at the southern borders of Mexico, in particular in Tapachula, Chiapas, according to the National Institute of Migration and stayed at refugee camps (Estación Migratoria) provided by the government.³⁹ Since initially, Mexico was a country of transit for Haitian migrants moving to the USA or Canada, the undersecretary for Population, Migration and Religious Affairs of the Federal Ministry of Interior at the time stated that although under normal circumstances an irregular migrant would have 20 days to leave the country, Mexico will not deport Haitians until they receive their legal documents to enter the United States.⁴⁰ However, after the abovementioned withdrawal of the temporary protected status in the USA, more than 4000 applications seeking asylum or humanitarian protection were submitted in Baja California in February 2016 alone.⁴¹

As Mexico experienced a large influx of irregular migrants in 2015, which led to a crisis similar to the EU's refugee crisis, Haitian nationals received no special treatment moving forward. Currently, Mexico is facing a potential crisis situation again. According to Andres Ramirez, the current head of the Mexican Commission for Refugee Assistance (COMAR), thousands of Haitians entered Mexico irregularly from its Northern neighbour due to the announced deportations, and thousands of Haitians resettled in Brazil or Chile have entered Mexico irregularly from the South unhappy with deteriorating economic conditions of their adopted countries. Refugee applications now take 6 to 7

³⁵ <https://www.voanews.com/a/us-ramps-up-haitian-deportation-flights-but-lets-other-migrants-stay-in-us/6241286.html> (31 October 2021).

³⁶ <https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/update-haiti-immigration-figures-december-31-2010.html> (1 May 2021). Wilson p. 31.

³⁷ https://www.entreculturas.org/files/documentos/estudios_e_informes/Flujos%20haitianos%20haciaAL.pdf (10 August 2021), p. 4.

³⁸ <https://www.gob.mx/inm/documentos/preguntas-frecuentes-para-solicitar-el-cambio-a-visitante-por-razones-humanitarias> (1 May 2021).

³⁹ https://www.gob.mx/cms/uploads/attachment/file/281220/Informe_Caso_Haitianos_y_Africanos.pdf (1 May 2021), p. 1.

⁴⁰ <https://expansion.mx/nacional/2016/10/10/la-tragedia-que-persigue-a-los-haitianos-hasta-mexico> (1 May 2021).

⁴¹ <https://www.gob.mx/inm/documentos/preguntas-frecuentes-para-solicitar-el-cambio-a-visitante-por-razones-humanitarias> (1 May 2021).

months to process and are difficult to finish as many applicants are no longer around as they have moved North, closer to the US border. Change in federal Mexican legislation would be essential, as humanitarian visas, granting a the right to stay and a work permit for its holders for a period of one year, may only be granted to those who have applied to COMAR for refugee status.⁴²

2.5. French Guiana

French Guiana is a traditional destination in terms of Haitian emigration, since its francophone and an overseas department of the Republic of France. However, in the 2000s, Guiana has virtually closed its borders to immigrants, and, in 2010, President Sárközy asked neighbouring Suriname to do the same. Consequently both countries started issuing transit visas, as well as temporary residence visas to asylum-seekers, and as a result French Guiana (and Suriname) became a tranzit country on the way to Brazil.⁴³

Between 2010 and 2015 only 4,5% of the applicants were finally granted asylum in France. However, over half of the applicants for refugee status received subsidiary protection from France.⁴⁴ Under the so-called Qualification Directive of the EU, subsidiary protection may be granted to a person, who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to their country of origin would face a real risk of suffering serious harm, and is unable or, owing to such risk, unwilling to avail themselves of the protection of that country.⁴⁵ The devastation caused by a natural disaster may be considered such a serious harm, however EU member states have implemented and applied this Directive rather conservatively under normal circumstances.

2.6. Brazil

Although as mentioned above, Brazil had not been a traditional country of destination for Haitian migrants before 2010, it became the top country of destination by 2016.⁴⁶ Most Haitian nationals arriving after the earthquake applied for refugee status. At first, in 2010, they received a temporary, asylum-seeking status until a final decision as Haitians entering Brazil in the aftermath of the earthquake did not specifically meet the requirements of the Geneva Convention on Refugees. The government thus provided Haitian applicants with a work permit and fiscal credentials necessary under Brazilian law to legally stay in Brazil as an immigrant. However, this practice was suspended in February 2011.⁴⁷

Those who did not get a legal status, remained in the country though and so the National Immigration Council recommended to the Ministry of Employment in March 2011, to provide Haitians with a residence permit on humanitarian grounds. In January 2012, the National Immigration Council

⁴² <https://www.reuters.com/world/americas/their-prospects-dim-haitian-migrants-strain-mexicos-asylum-system-2021-10-05/> (31 October 2021).

⁴³ J. Handerson, *The Haitian migratory system in the Guianas: beyond borders*, Diálogos, Maringá-PR Brasil, Vol. 24, No. 2, pp. 207-209.

⁴⁴ Audebert 2017, p. 6.

⁴⁵ https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/subsidiary-protection_en (10 August 2021).

⁴⁶ https://robuenosaires.iom.int/sites/default/files/publicaciones/Diagnostico_Regional.pdf (1 May 2021), p. 48.

⁴⁷ https://www.entreculturas.org/files/documentos/estudios_e_informes/Flujos%20haitianos%20haciaAL.pdf (10 August 2021), p. 2.

created a permanent visa for humanitarian reasons by Normative Resolution No. 97/2012 for five years. The annual quota was 1,200 visas (100 per month), which did not include applications for visas on the grounds of family reunification.⁴⁸ Initially, the resolution should have been in force for only two years, but the program has been extended annually from 2012 to 2016. Altogether throughout the years 48,000 applications were successful, a refugee crisis unfolded at the Brazilian borders due to the various forms of illegal facilitation of migration.⁴⁹ One of the key requirements of the applicants that were put in place was that such a visa application could only be filed in person to the Brazilian consulate in Port-au-Prince. The Brazilian consulate was overloaded by work, which slowed down the whole process, and a waiting list had to be drawn up. For those that were already in the country, the granting of humanitarian visas were to remain for „special cases” but were mostly left without a case in the eye of the authorities.⁵⁰ To ease the crisis, by April 2013, the Brazilian government decided to issue Normative Resolution No. 102/2013, which (i) revoked the limit of a 100 visas per month; (ii) stroke the requirement that humanitarian visas must be submitted to the consulate in Port-au-Prince and thus these could also be processed in Ecuador, Bolivia, and the Dominican Republic, among others.⁵¹ To finally resolve the crisis, under Normative Resolution No. 27/1998, 50 000 undocumented Haitians were granted permanent residence in Brazil.⁵² By 2020, the Haitian population grew to around 143,000 in Brazil. However, due to economic downturn and a right turn in governance with the election of President Bolsonaro, many decided to leave Haiti, first to Chile and then farther North.⁵³ In September 2021, IOM has formally requested the Brazilian government to receive Haitians who moved to the USA or Mexico from Brazil, or who have a Brazilian child.⁵⁴ The Brazilian government is yet to decide what to do about secondary movements and have not enacted any special measures concerning potential new arrivals after the August earthquake.

2.7. The gateway to Central America: Chile, Ecuador, Colombia, Panama

Chile and Ecuador are the gates of the Caribbean in terms of South-to-South migration trajectories, therefore these usually serve as transit countries for immigrants. According to IOM, no special measures were enacted regarding the Haitian environmental migrants.⁵⁵ However due to existing liberal, employment oriented immigration regulations, in the first three months of 2011, the number of Haitians entering Chile and Ecuador was equal to the number of Haitians entering in 2009 in total.⁵⁶

In Chile, a very favourable alien law in force was enacted in 1975 under Pinochet (Presidential Decree Act No. 1094). Initially, the law linked the only available visa for employment to a single employer, who also had to commit to pay to transfer the immigrant from their country of origin to Chile. In case of the termination of employment, the immigrant had to leave the country within 30

⁴⁸ Wilson p. 64.

⁴⁹ Audebert 2017, p. 3.

⁵⁰ Wilson pp. 64-65.

⁵¹ Ibid. p. 66.

⁵² Audebert 2017, p. 4.

⁵³ <https://www.migrationpolicy.org/article/haitian-migration-through-americas> (31 October 2021).

⁵⁴ <https://www.reuters.com/world/americas/exclusive-un-migration-body-asks-brazil-receive-haitians-us-mexico-border-2021-09-24/> (31 October 2021).

⁵⁵ https://robuenosaires.iom.int/sites/default/files/publicaciones/Diagnostico_Regional.pdf (1 May 2021), p. 48.

⁵⁶ https://www.entreculturas.org/files/documentos/estudios_e_informes/Flujos%20haitianos%20haciaAL.pdf (10 August 2021), p. 2.

days. In April 2015, a new temporary visa for employment was enacted, which allowed immigrants to enter the country with an already executed employment contract or even a job offer for a duration of one year, with the possibility that if the employment was not executed or was terminated, the immigrant may look for a new job within the duration of their work visa.⁵⁷ Haitians, in particular, could enter Chile visa-free until 2018. In 2015, more than 12,000 Haitians arrived in Chile, and more than 103,000 in 2017. After the enactment of new visa requirements, in 2018, still some 27,000 Haitians entered Chile. However, moving forward the number of Haitians leaving Chile has started exceeding the number of Haitians entering, the latter dropping below the 2010 level by 2019.⁵⁸

Ecuador enacted a visa waiver for nationals of Latin-American and Caribbean countries already in 2008, which meant that Haitians could enter with a 90-day tourist visa any time to look for work, even before the earthquake. As a response to the aftermath of the natural disaster, in February 2010, Executive Decree No. 248 declared the regularisation of irregular immigrants, such as Haitians displaced by the earthquake, as well as their spouses and their children.⁵⁹

Haitians did not begin to arrive consistently in Panama until 2016, when almost 17,000 people entered. According to the Migration Policy Institute, this was at least in part prompted by Hurricane Matthew and due to changing socioeconomic and political dynamics in Brazil. With the surge in Haitians (and Cubans) transiting through the region, Central American countries have struggled to receive them. Nicaragua notably closed its border in late 2015, leaving many Haitians and Cubans stuck for months in Costa Rica. As a result, a large number of Haitians began travelling through Central America around 2016, who were then trapped in limbo during transit. Since 2016, the numbers of Haitians transiting through Panama and the rest of Central America have fluctuated. However, 2021 is yet another record year for Haitians transiting through Central America. Colombian officials estimated in July that around 1,500 Haitians crossed the border from Ecuador each day. In August 2021, regardless of the recently struck earthquake in Haiti, Colombia, Panama and Costa Rica agreed to cooperate in the controlled flow policy and to limit the number of Haitians crossing into - for example - Panama.⁶⁰

2.8. Argentina

Just like in Chile or Ecuador, under normal circumstances, Haitians enjoy visa free entry to Argentina, however at the border control entrants may be asked to present documents proving their purpose of „tourism” and may be rejected if such documents are not produced.⁶¹ Any alien in Argentina may apply for the following three temporary regular status: work visa, student visa, and visa for humanitarian reasons⁶². Residence for humanitarian reasons is granted by the National Migration Directorate, who decide whether the applicants are entitled to such special treatment. According to the National Migration Directorate, Haitian applicants were to be granted such status as subsidiary means, meaning that applicants are granted temporary residence on humanitarian grounds, unless they are entitled to refugee status based on their asylum claims. Much like the EU’s subsidiary protection status under the above mentioned Qualifications Directive. According to the National

⁵⁷ Wilson p. 92.

⁵⁸ <https://www.migrationpolicy.org/article/haitian-migration-through-americas> (31 October 2021).

⁵⁹ Audebert 2017, p. 6.

⁶⁰ <https://www.migrationpolicy.org/article/haitian-migration-through-americas> (31 October 2021).

⁶¹ Such documents are: hotel reservation, or invitation letter from a specific person in Argentina, and in some cases an amount of approximately 1000 USD that can cover the stay in Argentina. Wilson p. 117.

⁶² According to Art. 23 of Act No. 25.871 and Regulatory Decree No. 616/2010.

Migration Directorate 1482 Haitian nationals applied for temporary residence and 408 for permanent residence between 2010 and 2016.⁶³ After three years of continuous residence in the country, temporary residence holders could apply for permanent residence.⁶⁴

The National Migration Directorate also approved a—duty-free—special mechanism to facilitate the regularization of migration for humanitarian reasons for Haitian nationals. This special regime allows for Haitian nationals to be granted a temporary residence for 2 years, who hold ordinary passports, who entered Argentina as tourists before 1 March 2017 and are not entitled to any other grounds for immigration. The special mechanism was enacted for a temporary period of 6 months from 15 March 2017. According to the Ministry of Interior, this special mechanism was enacted explicitly to assist the survivors of the 2010 earthquake.⁶⁵

It must also be noted that up until today, due to the lack of necessity, no special measures have been enacted concerning the victims of the 2021 earthquake.

3. Conclusions

The analysis of the domestic legal responses of the receiving countries in the region to the influx of Haitian nationals displaced by the 2010 earthquake is summed up in the following table:

Receiving country	Refugee status	Special legal status	Special procedural measures	Ordinary legal status on humanitarian grounds	In-kind provisions
Canada	No	No	Yes	Yes	n/a
USA	No	Yes	No	No	Yes
Mexico	No	No	No	Yes	n/a
French Guiana	No	No	No	Yes	n/a
Brazil	No	Yes	No	Yes	n/a
Chile	No	No	No	No	n/a
Ecuador	No	No	No	No	n/a
Argentina	No	Yes	No	Yes	n/a
Dominican Republic	No	No	No	No	Yes

Table 1.

Legal responses for migration induced by the 2010 Haitian earthquake on the American continent

In order to establish whether there is a need for an international convention on the protection of those displaced by natural disasters and environmental degradation, I have assessed domestic immigration policies from two aspects: a) how prepared was the country to receive the displaced in terms of already available legal status and therefore protection, and b) how flexible were their legal regimes in order to accommodate a sudden influx of people, either temporarily or permanently.

⁶³ Wilson p. 109.

⁶⁴ Ibid. p. 116.

⁶⁵ http://www.migraciones.gov.ar/accesible/indexA.php?mostrar_novedad=3427 (1 May 2021).

Consequently, I have drawn the following conclusions.

Firstly, in terms of country of destination, it may be established that those displaced by the earthquake or circumstances of its aftermath headed for traditional countries of destination, with the exception of Brazil, which has emerged as a regional economic power during the aftermath of the natural disaster. Therefore, it is virtually impossible to distinguish an economic migrant from an environmentally displaced person, due to the fact that once a person is compelled to move away from their home, they will go somewhere where their livelihood is best ensured.

Secondly, in terms of dealing with a sudden influx of displaced persons, the host countries implemented ad hoc measures to swiftly deal with the influx: some countries opted for a temporary legal status aiming to help for a limited time period at their own discretion, not granting permanent residence, while some other countries recognized the economic benefits of a potential work force and provided an avenue to permanent residence, while a very few receiving states almost pushed people over their borders to other countries with transit visas in order to avoid even the temporary settlement of those displaced. In addition, most of the assessed domestic immigration standards do not adequately reflect the diverse means and motivations of international mobility, i.e. the consequences of the above-mentioned multidimensional quality of human insecurity in places such as Haiti. Therefore, current immigration regimes either prescribe oversimplifying standard legal categories such as the refugee status, or apply a blanket form of relief for the complex man-made or naturally occurring circumstances inducing human mobility, such as the humanitarian visa.

Penultimately, referencing the Geneva Convention on Refugees, no country has provided refugee status to Haitian nationals, and while that may be correct under the strict application of international law, some form of subsidiary protection is necessary for persons who are unable to return to their homes due to the serious harm that they face at home. As mentioned above, although the Cartagena Declaration would allow a signatory to include natural disasters as a ground for granting asylum to an applicant, up until today no signatory state has enacted domestic laws to implement this provision, and this also explains why none of the receiving states has provided refugee status to those displaced due to the Haiti earthquake. In fact, although the IOM acknowledges the term „environmental migrant”⁶⁶, and the UNHCR also references „environmentally displaced persons” in their Guiding Principles on Internal Displacement⁶⁷, these working definitions haven’t been implemented—neither in domestic legal systems, nor in international conventions with a legally binding effect.

Finally, it is evident from the spill over effect of displacement in the Central American region that ad hoc immigration measures bear ad hoc secondary movements and shift responsibilities. Multi-lateral international cooperation therefore is inevitable as bilateral or limited regional coordination are necessitated by circumstances any ways, such as in the case of Panama and its neighbours. It is also evident that environmental displacement is not an individual case but subsequent secondary movements necessitate long-term planning and permanent structural immigration solutions, internationally.

⁶⁶ Environmental migrants are persons or groups of persons who, predominantly for reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move within their country or abroad. <https://environmentalmigration.iom.int/environmental-migration> (1 May 2021).

⁶⁷ Persons who are displaced within their country of habitual residence or who have crossed an international border and for whom environmental degradation, deterioration or destruction is a major cause of their displacement, although not necessarily the sole one. This term is used as a less controversial alternative to environmental refugee or climate refugee that have no legal basis or *raison d’être* in international law, to refer to a category of environmental migrants whose movement is of a clearly forced nature. <https://environmentalmigration.iom.int/environmental-migration> (1 May 2021).

Although ten years on, the environmental crisis seems to have been resolved effectively, with the lingering secondary movements, the onset of climate change and the increased frequency and intensity of prospective natural disasters, in the region and around the world, a more long-term vision and standard legal regime should be implemented by the international community as a whole for the future. In order to avoid situations where displaced persons are left in limbo and without protection, international coordination should be enhanced with international conventions regulating the legal status and the protection to be enjoyed by those who are displaced due to environmental degradation. This need is already reflected in the United Nations' Global Compact for Safe, Orderly and Regular Migration⁶⁸, therefore negotiations on a regional level, within the Framework of the Organisation of American States should commence to encourage the implementation or the improvement of the Cartagena Declaration.

⁶⁸ <https://undocs.org/A/RES/73/195> (1 May 2021).