

# Conflicting Priorities in South American Migration Governance

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## **Abstract**

Historical extra-regional emigration patterns have shaped South America's focus on a human-rights approach to migration. Concern for emigrants permeates debates at the annual South American Conference on Migration (SACM), yet national legislation emphasises immigration rather than emigration. Comparing national legislation to SACM documents between 2000 and 2021, we show that countries fail to reflect the same priorities as regional agreements in their laws. The interlevel discrepancies reveal that—despite prominent roles for regional cooperation, international organisations, and global migration governance—when it comes to migration legislation in South America over the last two decades, we find sovereign law-making within national territories trumps regional agreements.

**Keywords:** comparative migration policy, emigration legislation, migration governance, regional consultative process, South American Conference on Migration

## Introduction

South America's consistent history of high intra- and extra-regional emigration flows has influenced its central focus on regional and sub-regional integration throughout the continent. A corollary of these two characteristics is including intraregional migration in regional integration processes, which began forming in the 1970s, with the Comunidad Andina (CAN, Andean Community), and expanded in the last thirty years with MERCOSUR, Unión de Naciones Suramericanas (UNASUR, the Union of South American Nations), and the Alliance of the Pacific. The global discussion on migration management of the mid-1990s led South American states to form the SACM in 1999. Also known as the Lima Process, it is an intergovernmental regional cooperation process defined as political space for dialogue and cooperation on migration-related matters (Mármora, 2016). All 12 South American countries are members and except for 2005 and 2019, the SACM has met yearly since 2000.

Emigrants and emigration have been important to the SACM since its second meeting in 2001. The member states have consistently framed its migration debates on migrants' human rights and migration policy coordination (Finn, Doña-Reveco and Feddersen, 2019; Doña-Reveco and Feddersen, 2020). Extra-territorial flows caused South American governments to worry about their emigrants and try to counter the rhetoric from Western immigrant-receiving states that reject and criminalise irregular immigration (Acosta and Freier, 2015). However, in a context of heightened intraregional migration and changes in immigration flows and stocks, regional-level emigration debates seem to have become overshadowed by a growing interest in *immigration* 'control' or 'management'. While there is a growing literature focused on emigration policy and implementation in South America (Pedroza and Palop-García, 2017; Margheritis, 2016), coordination between regional and national levels and the application of SACM agreements in national legislation remain understudied. Thus, in this article we seek to answer the following question: How are emigrants and emigration incorporated into regional agreements and national legislation? We argue that despite regional agreements, countries fail to reflect the agreed priorities related to emigrants and emigration in their national laws.

Interlevel differences comprise a critical area of study because what states agree on at the regional level sets *expectations* for the domestic implementation of regional aims. Such expectations are at the core of SACM's intention that member states will use regional discussions to implement 'best practices' at the national level (Hansen, 2010; Harns, 2013; Mármora, 2016). For our analysis, the 'national level' is the space in which social and political debate occurs in and about a specific country, that is, where actors develop, discuss, and approve or reject emigration-related legislation. The 'regional level' is where political actors, for

example, participating member states, share information and reach agreements on normative aspects of emigration. South America possesses an ongoing and collective regional-level effort that is separate from, although related to, national-level migration policymaking (Martínez and Orrego, 2016; Mármora, 2016; Finn, Doña-Reveco and Feddersen, 2019; Doña-Reveco and Feddersen, 2020). The SACM member states attempt to make sense of, then manage, migration at the regional level and then actors *repeat* these two steps of migration governance at the national level (Geddes et al., 2019; Finn and Doña-Reveco, 2021). We find changes in national legislation do not always reflect regional aims, possibly highlighting state actors' (in)capacity to make changes 'at home' after regional conferences.

Using publicly available sources, we compare national comprehensive migration laws from 2000 to 2021 with references to emigrants, emigration, or diasporas of ten South American countries—leaving out Guyana and Suriname due to their unique migration history and policy processes in relation to the other countries in the region—with the final declarations of the SACM conferences, and further support our analysis with existent scholarly literature (e.g., Harns, 2013; Mármora, 2016; Acosta and Freier, 2018; Finn, Doña-Reveco and Feddersen, 2019; Doña-Reveco and Feddersen, 2020; Finn and Doña-Reveco, 2021). The starting year of 2000 is when the region began the collaborative annual meeting to discuss migration policy, which continues to the present day. A comparative analysis of the two levels provides a broad overview, rather than stand-alone single-level studies, revealing insights from South America that may apply to other regions.

Our argument highlights interlevel discrepancy between the importance states give to emigrants and emigration at the regional level versus the national level. While recognising that the nature of the debates is different at both levels—considering, for example, ideologically opposing political parties at the national level and in principle collaborative states at the regional level—discrepancies relate more to: a) the importance accorded emigration debates on each level, and b) the difference countries make between intra- and extra-regional emigration. National migration laws in South America continue to focus on *immigration*, leaving *emigration* and emigrants as secondary topics. Of course, diaspora-engagement policies do exist in South American countries; governments have developed significant, albeit specific, laws to protect their nationals abroad and maintain connections with diasporas. Examples include laws on double taxation, voting rights for emigrants, and return benefits, among others (see Pedroza and Palop-García, 2017). We argue, however, that, in the South American region, unlike *immigration*-related policies that are consistently connected to national comprehensive migration legislation, *emigration* and diaspora-engagement policies are not usually a significant part of such legislation. Thus, despite South America being a mainly emigrant-sending region and the SACM making nationals abroad a core topic of its discussions, emigration and

diaspora policies appear to be an after-thought, or secondary topic, in national legislation. Our results from South America encourage other comparative analyses of emigration and diaspora-engagement policy discussion in other regions.

In the following section, we outline emigration patterns from South America, to provide the context under which emigration policies and laws—including both exit requirements and diaspora-engagement related policies—have emerged. The next section then comprises a national-level analysis of emigration-related laws in ten South American countries, before the article moves to the regional-level analysis of the member states' yearly SACM meetings. We then move on to compare the two levels, outlining our findings on the similarities and differences between regional agreements within SACM and the incorporation of emigration and diaspora-engagement policies into each South American countries' comprehensive migration legislation.

## **South American Emigration**

Post-World War II international migration dynamics in South America have been marked by decreasing immigration from beyond the region, increasing intraregional migration, and increasing extra-regional emigration (Cerrutti and Parado, 2015; Martinez and Orrego, 2016). However, recent decreases have shaped South America's focus on a human-rights approach to migration and concern for emigrants has been central in debates at the region's annual meeting, the SACM. Intraregional migration (i.e., relocation to another South American country) has played an important part in the region's emigration patterns. Economic crises in the late 2000s and early 2010s, higher entry barriers to traditional immigrant-receiving countries in the Global North, and social, political, and economic changes in the region have resulted in intraregional migration becoming the largest component of emigration flows within South America (Cerrutti and Parado, 2015; Martinez and Orrego, 2016).

The first two decades of the 21<sup>st</sup> century entailed important changes in the direction of migration flows originating in South America and in the immigration stocks from these countries present throughout the world. By 2010, two-thirds of all South American emigrants were distributed in similar proportions in Europe and South America, and one-quarter in North America. Ten years later, 44 percent of South American emigrants lived in another country within the region, the emigrant stock in Europe had decreased to one-quarter of the total, with, still, a similar proportion in North America. More importantly, the growth (of the numbers of emigrants) over the same period of intraregional emigration stocks increased by 70

percent, far higher than the 30 percent growth of the emigrant stock in North America and the less than 1 percent growth in Europe (UN DESA, 2019).

Such changes stem from massive economic and socio-political crises in traditional destination countries. Following the 2008 economic crisis in Spain, migration to South America significantly increased, mainly comprising return migrants as well as young highly educated Spaniards (Izquierdo, Jimeno, and Lacuesta, 2016). Starting in the mid-2000s, but accelerating after 2015, Venezuela changed from being one of the largest historic immigrant-receiving countries to one of the largest emigrant-sending countries in the region, demonstrating that domestic crisis can quickly disrupt historic migration trends (Brumat, 2021). Around 80 percent of the 5.6 million Venezuelans refugees and emigrants who have left since 2015 have remained in South America (Brumat, 2021; UN DESA, 2019).

Former emigration countries have also become immigration countries. Chile has new inflows from Haiti and Venezuela and its total immigrant population has increased five-fold since the 1990s, comprising about 8 percent of the country's overall population (Doña-Reveco, 2018; Finn and Umpierrez de Reguero, 2020). Colombia and Peru are morphing from net sending to receiving countries, again mostly due to large Venezuelan immigrant inflows (Brumat, 2021).

The migration flow changes obviously did not occur in a vacuum. The consolidation of democratic rule in most South American countries in the 1990s and the greater protection of human rights led, among other things, to a growing liberalisation of population movements in the region (Mármora, 2016). While significant previous attempts had tried to facilitate labour movements, as in the 1960s within the Andean Pact, it was during the 1990s that intraregional migration became a central component of South American integration processes, such as Mercosur and more recently UNASUR and the Pacific Alliance. Also relevant was the confluence of ideologically similar administrations in several countries in the region between 2000 and 2015. These left-of-centre governments—known collectively as the Pink Tide—consistently promoted the inclusion of human-rights language in the SACM and in migration legislation passed during this period. Lastly, increasing restrictions on Latin American immigrants in Europe and the United States facilitated the construction of a united front for protecting South American immigrants in these regions (Cerrutti and Parado, 2015; Acosta and Freier, 2015).

Within this context, much migration-related policy was developed. Migration-related policies are the laws, regulations, decisions, orders, and other relevant elements about migrants and migration (Helbling et al., 2017). They can be divided into immigration policies and emigration policies. The first includes state decisions on foreigners' rights to enter, reside and work in, return to, and leave its territory, as well as their rights within the territory (Hammar, 1985). The second comprises policies defining which nationals can

leave their own country and under what conditions they can do so (emigrant policies) and diaspora-engagement policies developed to establish or maintain connections between emigrants and their country of origin (Green and Weil, 2007; Pedroza and Palop-García, 2017).

Over the period of analysis, rhetoric has shifted from casting emigrants in a negative light to celebrating them ‘as national heroes and model citizens’ (Gamlen, 2012: 238). Part of reconceptualising the diaspora’s role included recognising emigrant remittances as potential sources of revenue to boost the country of origins’ national economy and support economic development (Délano and Gamlen, 2014; De Haas, 2010). Adamson and Tsourapas (2019) classify this as a ‘developmental model’ type of migration management regime, applied in the ‘Global South’ when emigration (the export of labour) is used as a development tool.

Rather than unilateral actions, states aiming to establish or renew connections also need to establish new social contracts defining the relations between emigrants and their country of origin, in which individuals have an increasingly strong position as political actors (FitzGerald, 2009). As such, countries apply approaches to gain (political) support and resources from citizens abroad (see, e.g. Brand, 2006; Margheritis, 2016; Acosta, 2018; Burgess, 2018). Political parties across the globe also engage with, lobby, and campaign among nationals abroad (Burgess, 2018; Kernalegenn and van Haute, 2020). Some countries, such as Colombia and Ecuador, even dedicate legislative seats to represent emigrants as an overseas district (Umpierrez de Reguero, Dandoy and Palma, 2017). Given the growing socio-political and economic roles of nationals abroad, how are emigrants and emigration incorporated into South American regional agreements and the countries’ national legislation?

## **National-Level Analysis: Domestic Emigration Legislation**

We start by analysing comprehensive national (domestic) migration legislation, by which we mean the legal documents approved by national congresses or similar legislative bodies that seek to address all the migration issues faced by a nation in one piece of legislation. These define the range of actions that a state can take regarding international migration and the rules migrants must adhere to in their relations with the country of residence (for immigrants) and country of origin (for emigrants).

Analysing laws in South America sheds light on regional phenomena but can also offer insights for other areas, including in the ‘Global North’. One example is Acosta’s (2018) meticulous legal analysis of two centuries of migration and citizenship laws in South America, which explains how its legal migration model is distinct and how constitutional changes and democratic experiences offer lessons to other South-South migration regions as well as to the EU and US. Also, the national-level Emigrant Policies Index (EMIX) by

Pedroza et al. (2016) measures policy content and states' institutional capacity to implement emigration policies. EMIX scores indicate the overall degree and volume of emigrant policies that Latin American and Caribbean states use to create or maintain links with emigrants (Pedroza and Palop-García, 2017). What is not covered in the EMIX is the relevance states give to the size and type of emigration, which Margheritis (2016) highlights as integral factors for the resulting emigration policies. We complement this research by examining laws, which typically require developing consensus and agreements between political factions and are less prone than policies to ideological changes in government.

To examine national migration laws in each country since 2000, we use the International Labour Organisation's NATLEX database and the Organisation of American States (OAS) MILEX database. The exception is Chile, for which we analyse its 1975 Decree-law 1094, in effect until April 2021 and Chile's new Migration Law 21325 enacted in 2021, available via its Library of Congress online resources (Table 1). We look for the existence or absence of articles specific to emigration, as well as the components of these articles.

The ten South American countries analysed here have at least some form of migration law. Not all migration laws, however, include components related to diaspora-engagement policies. Measured by the number of articles that specifically reference 'emigration' or 'nationals abroad' (i.e., how such the legislation usually refers to diaspora engagement), countries vary in the extent to which their national legislation considers these topics (Table 2). Some laws governing migration do not include any emigration-related components, e.g., the 2004 Venezuelan migration law (N° 37,944), Peru's Migration Law N° 1,350 (2017), and Chile's 1975 Decree-law 1,094. At the other end of the spectrum, 59 percent of Ecuador's 2017 Ley Orgánica de Movilidad Humana and 40 percent of Colombia's short Law 1,465 on the National Migration System focus on diaspora-engagement policies. Less than 20 percent of articles in other traditional sending countries relate to emigration: Bolivia (19 percent), Paraguay (12 percent), and Uruguay (7 percent). In Argentina and Brazil, the largest immigrant-receiving nations in the region (besides pre-2015 Venezuela), only between 2.5 to 3.5 percent of the migration legislation relates to emigration. Lastly, Chile's new 2021 law has four emigrant-related articles (2.2 percent), none of which mention protection or representation by Chilean consulates.

**Table 1** Migration Laws in South America, 2000–2021

Country	Year of New Migration Law	Name or Title of Legislation (In original language)
Argentina	2003/2010	Ley de Migraciones No. 25,781; Decreto 616/2010
Bolivia	2013	Ley 370 de Migración
Brazil	2017	Lei N° 13,445 Institui a Lei de Migração
Chile	1975 and 2021	Decreto Ley 1,094 Establece normas sobre extranjeros en Chile Ley Núm. 21,325 Ley de Migración y Extranjería
Colombia	2011 and 2012*	Ley No. 1,465 (2011) ‘Por la cual se crea el Sistema Nacional de Migraciones y se expiden Normas para la protección de los colombianos en el Exterior’  Ley No. 1,565 (2012) ‘Por medio de la cual se dictan disposiciones y se fijan incentivos para el retorno de los colombianos residentes en el extranjero’
Ecuador	2017	Ley Orgánica de Movilidad Humana
Paraguay	1996/2010**	Ley N° 978/96 de Migraciones  Ley núm. 3,958/10 que modifica y amplía la Ley núm. 227/93 que crea la Secretaría de Desarrollo para repatriados y refugiados connacionales y modifica la Ley núm. 978/96 de Migraciones
Peru	2017	Decreto Legislativo N° 1,350 Ley de Migraciones
Uruguay	2008	Ley N° 18,250 Migración
Venezuela	2004	Ley de Extranjería y Migración N° 37,944

*Sources:* Laws from Bolivia, Brazil, and Venezuela come from the NATLEX database of the ILO ([www.ilo.org/dyn/natlex/natlex4.home?p\\_lang=en](http://www.ilo.org/dyn/natlex/natlex4.home?p_lang=en)) using the term ‘migrant worker’ to search for policies; except for Chile, the rest are from the MILEX database of the OAS ([www.migracionoia.org/index.php/en/milex-en.html](http://www.migracionoia.org/index.php/en/milex-en.html)), under the ‘national or federal laws’ (*leyes nacionales o federales*) heading. Both Chilean Migration Laws are available at this country’s Library of Congress (<https://www.bcn.cl/leychile/>).

\*Colombia enacted two migration laws within our period of analysis.

\*\*Paraguay’s migration law is from 1996, but it was reformed in 2010 adding specific articles on emigration and emigrant return.



**Table 2** Percentage of Articles in National Migration Laws that Refer to Emigration and/or Diaspora-Engagement (National Abroad), South America 2000–2021

Country	Year of New Migration Law	Emigration-Specific Articles	Total Number of Articles in Law	%
Argentina	2003/2010	3	126	2.4
Bolivia	2013	13	68	19.1
Brazil	2017	4	124	3.2
Chile	1975 and 2021	4	180	2.2
Colombia	2011 and 2012	3	8	37.5
Ecuador	2017	36	62	58.1
Paraguay	1996/2010	19	155	12.3
Peru	2017	2	230	0.9
Uruguay	2008	6	84	7.1
Venezuela	2004	0	60	0.0

*Source:* Authors’ calculations based on National Migration Laws presented in Table 1.

The other countries, at the very least, implicitly reference the 1963 Vienna Convention on Consular Relations. In Article 5, the Convention defines various types of protection as key aspects for consular functions: ‘in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law’, as well as ‘helping and assisting nationals, both individuals and bodies corporate, of the sending State’. South American laws clearly delimit these two components. In addition, they share a need to establish reciprocal agreements with destination countries, again with the objective of protecting citizens abroad. Such protection is the only component of the 1963 Convention that mentions sanctions for non-compliance.

State-diaspora relations are complex and multifaceted (Délano and Gamlen, 2014), and South America is no exception. Deciding how to interact with emigrants requires considering how emigration affects the country of origin, which depends on ‘selection effects: who leaves, how many leave, why they leave, the legal basis on which they leave, where they go, how they fare, and how long they have been gone’ (Kapoor, 2010: 7). Countries have also used specific policies to atone for forced migrations and repair broken individual-state relations. Exile associated with military dictatorships in the Southern Cone between 1964 and 1991, civil wars in Colombia and Peru, as well as other forms of political and socioeconomic unrest, have influenced the relations between countries and diasporas (Acosta, 2018).

South American countries have generally been early adopters of dual citizenship and overseas voting, two key aspects of extra-territorial citizenship; as of 2020, all South American states except Suriname and Uruguay allow non-resident nationals to vote from abroad (Umpierrez de Reguero, Yener-Roderburg, and Cartagena 2021). Mending relations is also evident internationally when states grant special privileges—such as different legal statuses, quick naturalisation, and extensive voting rights—to foreign residents as a result of previous colonial relations (see Escobar, 2015; Acosta, 2018; Pedroza, 2019). However, only Bolivia and Ecuador refer to emigrants’ political rights and voting in their migration legislation.

A common feature of current migration laws is the idea of promoting the return of citizens abroad, although vast differences exist between countries. Argentina, Brazil, and Chile (in its 2021 law) simply state this right, whereas Bolivia, Colombia, and Ecuador detail the forms and conditions that return might take. This includes benefits accrued after return, such as tax breaks, degree recognition, and assisted return for vulnerable populations. While these benefits also exist in Argentina and Chile, they are not enshrined in migration laws. Five out of ten countries’ laws (Bolivia, Brazil, Colombia, Paraguay, Uruguay) focus on the process of acquiring national citizenship for emigrants’ children and their rights upon returning to their parents’ country. Colombia, Ecuador, Paraguay, and Uruguay include the promotion of emigrant associations, but Ecuador is the only one that mentions the right to send remittances and that actively discusses the state’s role in maintaining the national identity of its emigrants.

In sum, almost all states introduced new comprehensive migration legislation between 2003 and 2017. The only exceptions were Chile, which passed a new law in 2021, and Paraguay, which, rather than introduce a new law, reformed its 1996 law in 2009 to expand emigrants’ rights. However, the emigration components within the legislation remain mostly concealed within larger overarching migration laws and in some cases—such as Bolivia, Ecuador, Paraguay, and Peru—merged with *immigration*, for example in assertions that migration is a human right. Restrictive changes (such as the Brazilian president’s veto of certain parts of the 2017 migration law and the 2017 decree in Argentina that attempted to modify the country’s 2004 law) focus on immigration rather than emigration. Out of the 180 articles in Chile’s 2021 law, only *four* articles involve relations with Chilean nationals abroad. Thus, paraphrasing Délano and Gamlen (2014), migration legislation is still understood as immigration legislation.

## **Regional-Level Analysis: RCP Cooperation on Emigration**

Moving to the regional level, we analyse how South American states have engaged with neighbours on emigration policies during the annual meetings of the South American Conference on Migration (SACM)

from 2000 to 2021. The sources comprise official statements, reports, and presentations from each annual SACM meeting (available at: <https://csmigraciones.org>), which we searched for emigrant-related issues. Since many of them are scanned or protected documents, a systematic key word search was not possible. We instead conducted a thematic content analysis, searching the documents for our topics of interest. This provided fruitful results since vocabulary around emigrants varies widely (e.g. migrant persons, living outside the country, those who left/moved, nonresident nationals, nationals abroad, emigrants abroad, the diaspora, overseas citizens).

The SACM is a Regional Consultative Process (RCP), a regional-level migration governance structure. RCPs play a significant role as ‘discussion forums for States with an interest in promoting cooperation in the field of migration’, making consensus possible on migration-related topics (Harns, 2013: 110; Klekowski von Koppenfels, 2001). Such consensus has not however been reflected in national legislation in the past two decades (Finn and Doña-Reveco, 2021). At the meetings, member states discuss migratory topics and form non-binding agreements; government representatives attend, as do international organisations (as observers) (IOM, 2021b). Other scholars have analysed the SACM’s formation, topics, and agreements (e.g., Mármora, 2016; Finn, Doña-Reveco and Feddersen, 2019; Doña-Reveco and Feddersen, 2020). Nonetheless, they have not directly engaged with the RCP’s emigration-related aspects. We fill this gap by examining documents from each conference since its establishment in 2000 to outline how countries have discussed emigration and diaspora-engagement policies.

South America has a long tradition of moves toward regional integration, reflected in cooperation initiatives at the commercial, economic, social, cultural, and political level. With some more relevant than others, most of these initiatives have incorporated migration-related agreements. Among these are MERCOSUR’s 2002 Residency Agreement (Acosta and Finn, 2018), the CAN’s Labour Migration Instrument (Decision 545 of 2003, replacing Decision 116 of 1977), and the former UNASUR’ 2014 South American Citizenship agreement (Ramírez, 2016). Since the mid-1800s, South American nations have developed bilateral and regional agreements handling the expansion of consular services—more than a century before the expansion of consular services to include the protection of nationals overseas was established in the 1963 Vienna Convention on Consular Relations (Acosta, 2018: 67–70).

It was within this context of growing regional integration processes, coupled with the growing relevance of international cooperation on migration, that South American governments decided in 1999 in Lima to establish the SACM. This RCP had its first official meeting in Buenos Aires in 2000 and is supported by the International Organisation for Migration (IOM), offering, for example, technical expertise, policy guidance, and research (IOM, 2021b). The SACM’s objective is to create a space for dialogue on

migration-related matters and establish consensus regarding a regional agenda containing a set of basic tenets, which would thereafter allow for similar migration policies to be developed in each country (Hansen, 2010; Marmora, 2016). As an IOM representative at the 2017 SACM described it, SACM is a space for debating and making agreements regarding migration governance and policies.

Despite this objective and its name—the South American Conference on *Migration*—a priority of SACM member states is about what role migration can play in the overall regional integration process. While describing the SACM as one of the numerous RCPs around the globe, the IOM (2021c) states that one of its objectives is to strengthen the ‘political coordination among States’ throughout South America. Since the first SACM meeting, an ostensible focus on migration is continually used to refer to the process of regional solidarity, following or in conjunction with CAN, MERCOSUR, and UNASUR (also see Acosta, 2018; Acosta and Freier, 2018; Finn and Dona-Reveco, 2021). The same holds for the SACM’s ongoing discussion of citizenship since, at the regional level, it is not an integral part of emigrant-state relations. Instead, the free movement of people and South American citizenship are critical steps towards regional integration (IOM, 2021b). This perspective differs from national-level emigration laws that have a primary end goal of extending or maintaining emigrant-state links.

Despite being non-binding, the SACM meetings’ final declarations and resolutions have nonetheless been instrumental in promoting regional debates on migration policies. The regional debates have been part of the increasingly liberal governmental discourses on migration policies in South America (Acosta and Freier, 2015). The resolutions represent a consensus arrived at within the context-specific period, regarding which migration-related themes the region should focus on, and what the member states will ideally incorporate into legislation.

One such topic is ‘developing connections’ with emigrants: a topic raised at every meeting since the RCP began. The Chilean government put it on the 2001 conference agenda and at the SACM III, member states included it while drafting the Action Plan, a set of guidelines to direct future debates at the conference. Despite this explicit priority, as well as the historical relevance of the phenomenon throughout the region (as outlined above), it was difficult to locate the terms ‘emigrant’ or ‘emigration’ through our content analysis of the documents, as it was in most cases subsumed under the more general term ‘migrant’ or ‘migration’.

Searching for emigration-related discussion, we find that SACM documents do not generally differentiate between emigrants and immigrants. Throughout the 17 years, the statements contain terms such as ‘nationals abroad’, ‘migrants’, and ‘migrant persons’ or the ‘migrant person’ as the subject of inalienable rights. Broad terms could be used because South America’s high intraregional migration means

countries both send and receive large flows of regional migrants i.e. the SACM member states are countries both of origin and of residence for individuals from other SACM member states. Whereas one may perhaps expect more general terms to be used in regional-level discussions, their frequency is surprising given the context: concerns over emigrants abroad—albeit in extra-regional countries—had been a major reason for establishing the conference (Mármora, 2016).

One prominent theme about emigrants in the regional-level discussions has been the reasons why individuals emigrate within the region. The SACM has repeatedly (for instance: SACM III, VI, and VIII) considered reasons for the migration decision, implying that national-level circumstances cause emigration. The discussions seem to place a kind of ‘blame’ on countries of origin, framing human movement as a problem to be solved (SACM III and SACM VIII). The final documents list push factors that mostly involve economic conditions (poverty, opportunities, and wage gaps) as well as some social reasons, such as a lack of access to basic needs. While these factors are mentioned, there is no discussion on voluntary versus *involuntary* movement. A brief exception is an ongoing dialogue on preventing human trafficking, as well as (in 2016) how states can approach the issue of displaced individuals near border zones. Discussion of involuntary migration based on difficulties in the political arena, violence, or forms of oppression is absent. ‘Refugees’ are infrequently mentioned, except when participants refer to international accords. As with the ‘economic bias’ in studies from the ‘North’—focusing on economic migrants and ignoring forced migration (Adamson and Tsourapas, 2019)—the SACM discussions demonstrate the same bias, despite being located in the ‘Global South’ and having experience with refugee flows.

Another area in which emigrants appear are within discussions about the fair treatment of nationals in extra-regional countries. Over the years of interest, there have been changes regarding *which* emigrants the SACM members discuss. At the SACM II, participants specifically pinpointed strengthening connections with emigrants who reside outside of South America. A brief document by the Chilean government and the IOM also focused on extra-regional emigrants mentions emigrants’ possible psychosocial problems and suggests/proposes establishing permanent ties with emigrants in ‘risky situations’. This reflects an earlier understanding of who comprised the group of South American emigrants abroad: it was evident that concern over those who were living as extra-regional immigrants (in the EU, for example) greatly overshadowed intraregional migration. Reinforcing this notion, the same document suggests how states can view emigrant presence abroad to motivate the region to become more involved in the international arena. This is only mentioned again in the SACM IX final declaration, stating: ‘Our wish is to guarantee migrants within our region the same rights as those we seek for our citizens in transit and in destination countries outside our region, based on the principles of coherence, equity, and non-discrimination’.

While these initial perspectives and language reflect a conservative approach to the reasons for migration and its effects, discussions on emigrant-state relations within the SACM have since become more nuanced. For instance, documents from SACM VI and SACM X involve discussion on how citizens abroad can exercise their democratic rights and social inclusion in both countries of origin and of destination. By SACM XIV, the conference discussed the need for migrants to enjoy the same rights and social inclusion as nationals: in work, social security, healthcare, the justice system, housing, education, and social and political participation. At the SACM XVI in 2016, attendees even discussed emigrant voting (since suffrage rights have been increasing throughout the region via national-level policy) but the SACM took a broader view of how emigrant voting rights contribute to citizenship building and democratic consolidation, specifically in constructing a South American Citizenship. Despite these more specific and relevant topics, overall, member states generalise that the SACM encourages all states to take a rights-based approach to migration. As outlined in the previous section, this is not the reality in national-level migration legislation.

## **Comparing SACM's Agreements and Emigration Legislation**

How are emigrants and emigration incorporated into regional agreements and national legislation? We compared these two levels in South America by juxtaposing documents and non-binding agreements from the SACM with migration-related laws in ten South American countries between 2000 and 2021. In this section we highlight findings from our comparative analysis.

There are many ways in which states recognise emigrants as part of the nation and create nationhood bonds with the diaspora (Margheritis, 2016); we find this holds true in South America since the two levels of analysis have resulted in policy creation specific to emigrants' rights and citizenship. At the regional level, SACM member states express concern for fair treatment of non-resident citizens and their access to rights, including the freedom not to fear criminalisation and deportation. According to the final statements, there are regional attempts to connect with emigrants via consular services, as well as assistance for exercising these rights, especially accessing justice systems (also see Acosta, 2018). There is some collaboration between governments at the consular level to protect nationals abroad (see Délano, 2014). However, such collaboration is not envisaged in any national legislation in South America. At the national level, links are evident between emigrants and their states of origin states: for example, allowing nationals to repatriate retirement funds through bilateral social security agreements and granting political rights to those abroad (Collyer, 2013; Escobar, 2015; Palop-García and Pedroza, 2018; Finn, 2020). The national-level connection

attempts between the state and its emigrants have clear aims, but often take the form of policies rather than laws.

Another finding from our analysis is that, despite the historical and contemporary importance of intra- and extra-regional emigration for South American countries, their emigration legislation continues to be scarce or hidden within broader discussions of and laws concerning migration. We have observed this from the limited space, description, and specificity the topic has in comprehensive migration legislation, especially as compared to the more detailed and exhaustive treatment of immigration. As Adamson and Tsourapas (2019) note, such an imbalance dates back to understanding the ‘migration state’ as countries of residence seeking to manage immigration, rather than countries of origin seeking to manage emigration. Most statements about emigration are minor themes within migratory laws centred on immigration. These findings echo those of Margheritis (2016), to the effect that countries that see themselves historically as countries of immigration—such as Argentina and Chile—still have difficulties recognising *emigration* as a policy issue.

The immigration-emigration distinction is far from straightforward in some of our content analysis of SACM documents: regional-level emigration themes are so intermingled with immigration topics that it complicates distinguishing even the most salient discussions. There is extensive dialogue around, and intraregional agreement on, human rights and the free movement of people, unspecific to immigrants or emigrants. This holds true even when the topic of emigrants has infiltrated narratives and regular discourse for over two decades. It is surprising since it contrasts with regional solidarity efforts aimed at increasing integration and protecting emigrants, which was part of the original motivation to establish the SACM; however, it is also understandable and supports our idea that a consensus on the consolidation of a migration regime exists in South America, but purely in discourse and non-binding agreements. As the national-level analysis showed, only more recently have South American laws started to contemplate better-defined rights for emigrants, yet not all countries have incorporated these into their legislation, or they may have done so on paper but still fail to apply these principles in practice.

Despite their important role for development and citizenship practices, emigration and diaspora-related matters are also given scant consideration within other RCPs (Hansen, 2010; Harns, 2013). Considering the eighteen current RCPs, only the Migration Dialogue for West Africa lists emigration within its key discussion areas. In that RCP, states discuss emigration in a different context, regarding a reduction in emigration as a reflection of declining poverty in countries of origin. Besides the SACM, ‘diaspora’ serves as a major theme only in the Mediterranean Transit Migration Dialogue and the Regional Ministerial Conference on Migration in the Western Mediterranean. Compared to debates within the SACM, however, the discussion of emigration or diaspora in these RCPs is narrower since it relates only to economic

development opportunities. Overlooking emigrants and emigration means RCPs are falling short of understanding migration as a holistic concept involving both immigration and emigration.

## Conclusion

Although South American countries have high emigration, grant extensive extra-territorial citizenship rights and practices, and repeatedly discuss regional human mobility, emigrant and emigration-related laws remain scarce in the region. Even though South American states have opted for various policy tools to interact with emigrants, attract economic resources from abroad, and respond to emigrant needs (Pedroza and Palop-García, 2017), they have not designed overarching emigrant engagement policies (Margheritis, 2016) or embedded emigration-related policies into comprehensive migration legislation. As such, national migration legislation does not mirror the progressive regional-level intentions and agreements found in the SACM declarations.

In some respects, these interlevel discrepancies point to differences in actors' roles and capacities in the context of the regional meeting and in national law-making processes. They also reflect states' concern over *immigration*, particularly because of emerging patterns of population movement. Changes in migration inflows and outflows have made member states play new roles as countries of both origin and destination for *regional* migrants. Previously in the early 2000s, Chile proposed the theme of 'nationals abroad' as a central component of the conference but had a drastically different image of who emigrants were than they might be today. As the second SACM final declaration states, 'Considering... the possibility of strengthening the relationship and ties between South American people residing *outside the region* and their respective countries and communities of origin ... [the SACM could be used] to promote joint actions and the coordination of consular policies to improve the treatment of South American migrants *outside the region*' (IOM, 2001a emphasis added). Yet, by the late 2010s, the scenario had changed since the countries needing to uphold these rights are sitting at the table with neighbouring countries whose immigrants are their emigrants, and governments are seeing an increase in internal opposition to regional immigration.

The interlevel discrepancies found in our comparative legal and thematic analysis reveal the continued dominance of sovereign law-making within national territories when it comes to migration legislation. While integration is important for the region, national interest continues to dominate emigration-related legislation and policy (Czaika and De Haas, 2013). National-level legislation dominates even within the globalised world of cooperation among regions with international organisations and participation in both the Global Compact for Migration and the Global Compact on Refugees. For instance, by 2008, eight of these



countries had signed and ratified the International Convention on the Rights of Migrant Workers and their families (Venezuela signed it in 2011 and ratified it in 2016 and Brazil has not signed or ratified it) (OHCHR Dashboard, 2021). We observe that although South American governments show the continued political will to discuss and promote liberal approaches to emigration, they are in the end unwilling to reflect these regional narratives in emigration-related legislation.

From a practical perspective, our analysis highlights the shortcomings of RCPs in general and of the SACM in particular. These cooperation processes are defined by the requirement to develop non-binding agreements, which can be easily abandoned as soon as state representatives return to their home countries without any fear of penalty (Finn and Doña-Reveco, 2021). As we have pointed out, in times of changing migration flows, states are more likely to resort to immigration control-based policies rather than to overarching rights-based policies, for both immigrants and emigrants alike. In South America, it seems that while analysing emigration policies in the region has resulted in somewhat optimistic interpretations of state-diaspora relations, our legislation analysis speaks of more ambivalent relations with nationals abroad, to the point that they are disregarded in migration-related laws. The result suggests a need to be explicit when analysing immigration and emigration and when evaluating policies and legislation.

Moving forward, South American states must recognise that together they have created a unique migration regime focused on protecting the rights of migrants and their families: a general focus on ‘human rights’ has been a central component of the SACM from the outset (Finn and Doña-Reveco, 2021). Yet, individual member states have still not developed integral emigrant-related legislation or overarching policies to engage emigrants (Margheritis, 2016). One way to make the regional-level narrative more of a reality would be to mould national legislation to SACM agreements and put emigration-related issues on a par with immigration-related matters. Only then might it be possible to talk of a functioning migration regime based on human rights protections for all migrants throughout the region.

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