

Palacký University Olomouc  
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University of Pavia

**MASTER THESIS**

Gender in Migration Policies in South America: a case study of Argentina,  
Brazil and Chile

**Ana Souza Cruz**

Supervisor: Lucie Macková

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## Declaration

I hereby declare that this thesis entitled “Gender in Migration Policies in South America: a case study of Argentina, Brazil and Chile” has been composed solely by myself as a prerequisite for the completion of the Erasmus Mundus Joint Master Degree in International Development Studies - GLODEP. I confirm that this thesis is the product of my own work except where indicated otherwise throughout the thesis by reference or acknowledgement.

Olomouc, Czech Republic

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Ana Souza Cruz

# ZADÁNÍ DIPLOMOVÉ PRÁCE

(projektu, uměleckého díla, uměleckého výkonu)

Jméno a příjmení: **Ana SOUZA CRUZ**  
Osobní číslo: **R190714**  
Studijní program: **N1301 Geography**  
Studijní obor: **International Development Studies**  
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## Zásady pro vypracování

Migration flows in South America have been increasing impressively since 2010 and especially with the crisis in Venezuela that created massive emigration movements starting in 2015. Yet, the region has been far from the focus of mainstream research on migration. The literature also presents a gap concerning gender studies, although female migrants represent almost half of the total share. Women migrate for different reasons, face different circumstances when applying for asylum, are active in different job markets, and face different constraints when it comes to integration in the host society. Hence, it becomes crucial to analyze if migration policies are aligned with the unique reality of women. Therefore, this thesis will consist of research and review of migration policies in three selected South American countries: Argentina, Brazil and Chile. The main aim is to draw a comparison between them when it comes to migrant integration in the host society, labor, regularization, and asylum. The policies of each country will also be analyzed through the lens of gender, investigating if they discriminate against women directly or indirectly.

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Vedoucí diplomové práce: **Lucie Macková, M.A., Ph.D.**  
Katedra rozvojových a environmentálních studií

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## Abstract

During the last decades, the world has experienced the phenomenon of feminization of migration. Migrant women are often subject to double discrimination, by being migrants and women. Therefore, this thesis analyses the migration regulations and policies of Argentina, Brazil and Chile, in order to understand their degree of gender sensitivity. The primary research question is: are women at a disadvantage during the immigration or asylum-seeking process, compared to their male counterparts? The investigation will be based on a content analysis of the legislation, labour migration policies and asylum regulations of the three countries, through an interpretative approach. Argentina, Brazil and Chile have current migration laws that were written envisioning mainly the image of the male migrant, basically not accounting for women's specificities. They all lack proper labour migration policies that actively seek to improve the labour insertion of female migrants. Lastly, although the asylum regulations tend to be more gender-sensitive than the migration regulations in the three countries, Argentina is the only one to mention gender-specific forms of persecution as an eligibility criterion. Therefore, despite great progress in terms of migrants' access to basic rights, all three countries still fail to deliver a gender-responsive approach to migration.

Keywords: migration legislation, gender, labour, asylum, South America.

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## List of Abbreviations

ILO	International Labour Organization
INDEC	Instituto Nacional de Estadística y Censos [National Institute of Statistics and Census] - Argentina
INE	Instituto Nacional de Estadísticas [National Institute of Statistics] - Chile
IOM	International Organization for Migration
MIPEX	Migrant Integration Policy Index
NGO	Non-governmental Organization
UN	United Nations
UN DESA	United Nations Department of Economic and Social Affairs
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
WFA	Women-Friendliness in Asylum Index

## 1. Introduction

### 1.1 Migration in South America

Migration flows in South America have been increasing expressively, especially after 2015 with the crisis in Venezuela. Yet, the region has been far from the focus of mainstream research on migration. Therefore, this paper will consist of an investigation of migration policies in three South American countries: Argentina, Brazil, and Chile.

Argentina stands as the country with the highest number of foreign nationals on the continent - 2 million. It is also the preferred destination for intra-regional migrants (IOM Regional Office for South America, 2017). Its foreign-born population has increased by 22% between 2010 and 2019. In Chile, the foreign-born population has risen impressively by 150% between 2010 and 2019. Lastly, in Brazil, it has risen by 36% (UN DESA Population Division, 2019). The latter stands as the preferred destination for immigrants outside the region (Migration Policy Institute, 2021).

The three countries have started to pay closer attention to migration relatively recently. Previously, they all had migration laws that were promulgated under dictatorships, reflecting a focus on national security. Argentina was the first to replace it with a more flexible law, in 2004 (Law n. 25.871, 2004). Brazil and Chile promulgated new laws in 2017 and 2021 respectively (Law n. 13.445, 2017; Law n. 21.325, 2021).

The literature on migration also presents a gap concerning gender-sensitive analysis (although to a much lesser degree), even though female migrants represent almost half of the total share of the migrant population - 47.9% in 2019. In Brazil, the share of female migrants in 2019 was 46%, in Argentina it was 54%, and in Chile 53% (UN DESA Population Division, 2019). Hence, it is crucial to analyse if migration policies are aligned with the unique reality of female migrants.

The three countries present great similarities in what concerns migration practices. First, the history of migration is intertwined with the history of the countries themselves, which was marked by European colonization and, at least in the case of Brazil, African enslavement. Moreover, Argentina, Brazil and Chile experienced a period of dictatorship during the 70s and 80s, which translated into similar migration policies starting from the last decades of the 20th century. Despite a lot of progress being made towards a more

humanized approach to migration after the end of the dictatorships, the three countries have never completely abandoned a tendency towards a securitized approach.

## 1.2 Aims and Methods

The goal of this thesis is to understand if the Argentinian, Brazilian and Chilean migration policies are formulated in a gender-sensitive and gender-responsive manner. The main research question is:

- Are women at a disadvantage during the immigration or asylum-seeking process in Brazil, Argentina or Chile, compared to their male counterparts?

More specifically, the main research question is divided into three sets of sub-questions. The first one is:

- Does the main migration law of each country have an explicit gender dimension?

The second set is related to migrant labour policies.

- Are migrant women drawn into deskilling, finding employment below their qualification levels?
- Are women more likely to be found in occupations that reinforce gender roles?

Lastly, the third set concerns asylum policies.

- Does the regulation include gender-specific forms of persecution as eligibility criteria?
- Are the vulnerabilities of women taken into account in the asylum-seeking process?

In order to approach these questions, the chosen methodology is policy analysis, through an interpretative approach. The migration laws will be selected from official governmental sources, and will be analysed in light of the research question and sub-questions. Each country's migration policies will be reviewed in detail, in an attempt to investigate if they discriminate against women directly or indirectly. At this point, the analysis will be a summative content analysis, which consists of "identifying and quantifying certain words or content in text with the purpose of understanding the contextual use of

the words or content” (Hsieh & Shannon, 2005, p. 1283). Drawing a parallel to the work of Hennebry & Petrozziello (2019) with the texts of the Global Compacts on Migration and Refugees, I will analyse how gender is approached in the texts of the migration laws, identifying which aspects are present and which are absent. This task will be achieved through first coding the texts based on the search of terms such as women, gender, and others - which can be called manifest content analysis (Potter & Levine-Donnerstein, 1999) - and then determining the frequency with which they appear. Coding will be followed by latent content analysis, consisting of an in-depth analysis of each mention, investigating the context in which the terms were used (Holsti, 1969). Moreover, content analysis will also be applied to investigate the labour and asylum policies, which will be backed up by demographic data. The percentage of female migrants, their rate of employment, the jobs migrant women are performing and so on, will also be compared in order to evaluate the impact of the policies in the realities of those women.

The remainder of this thesis will be organized as follows. The second chapter will comprise a global overview of the topic of female migration, which will be backed up in a literature review to understand how female migration is approached in the academic world. This is relevant to shed a light on the important aspects to be analysed in the study, and also to illustrate the progress of female migration in the academic field and in other regions of the world, which can serve as a contrast for the South American case. The following three chapters will be devoted to the analysis of female migration in Argentina, Brazil and Chile. The thesis will be finalized with a discussion, which will sum up and compare the main findings.



## **2. Global Trends in Female Migration**

Until the 1980s, migration has been studied from the point of view of a homogeneous actor, namely the male migrant, characterizing a gender-blind approach. The experiences of women were mainly neglected. Otherwise, women were either portrayed as victims (Freedman, 2010) or as dependent daughters, wives, and mothers (Bach, 2009; Bloch et al., 2000; Grieco & Boyd, 2003; Hennebry & Petrozziello, 2019; Morokvasic, 1984). Either way, until now women have rarely been portrayed as individuals with their own agency. Grieco & Boyd (2003) warn that even though the academic field is now paying more attention to gender, some authors simply include it as a variable in an already existing explanatory framework that is gender-blind.

Nevertheless, women and girls comprise 48% of the total number of migrants in the world (UN DESA Population Division, 2020). Moreover, they are more prone to risks such as gender-based violence and exploitation. There are, according to Bloch et al. (2000), unique forms of persecution and human rights abuses which women are exposed to, including sexual violence, torture due to their secondary roles in political activity, and persecution due to non-abiding to social norms related to the roles of women in society. These norms may be related to dress codes, genital mutilation, arranged marriages and so on (Bloch et al., 2000).

### **2.1 Migration Legislation in the Destination Country**

According to Grieco & Boyd (2003), the destination country's policies may affect migration in four ways. First, by attaching a dependent status to women; second, by placing women in a family role and men in a market role, generating women's legal or financial dependency; third, by recruiting women into specific occupations based on stereotypes and traditional roles; fourth, by limiting the immigration options of women due to limited definition of women's roles.

Therefore, the first topic of the thesis is migration legislation which will be analysed to determine how gender-responsive they are. That is what Hennebry & Petrozziello (2019) attempted in a recent paper where they analysed the Global Compacts on Migration and Refugees. Their analysis was conducted through a content analysis, which is similar to what was done in this thesis for the migration laws of Argentina, Chile and Brazil.

Besides understanding how gender is framed in the migration laws, it is also relevant to investigate the family reunion regulations, since they can be responsible for excluding individuals, for increasing their degree of dependency, or for imposing long periods of separation and other burdens for families (Bloch et al., 2000). In some European countries, for example, family reunification is tied to the financial situation of the migrant, which can represent a substantial barrier. This is especially hard on female migrants, who usually earn less and are more concentrated in informal jobs (Bach, 2009).

## **2.2 Labour Policies in the Destination Country**

The second topic of the analysis is female labour migration. Most western countries including the United States, Canada, Australia, and Germany for example, have demonstrated in the past a preference for skilled migrants mainly to attract human capital (Bailey & Mulder, 2017; Boucher & Cerna, 2014; Grigoleit-Richter, 2017; Iredale, 2005; Man, 2004; Riaño & Baghdadi, 2007). However, besides being often male-dominated, the high-skilled labour market may present barriers to the entry of migrant women. Germany, for example, adopted a policy encouraging migration to fields such as science, engineering, and technology. However, migrant women entering these fields face gender and ethnicity discrimination due to the traditional highly gender segregation in those sectors, which hampers their integration and contributes to a sense of othering (Grigoleit-Richter, 2017). Moreover, women are also at a disadvantage when facing policies designed to attract high-skilled migrants on the basis of income, which was the case for Ireland and the Netherlands (Kofman, 2012), or with requirements of full-time or continuous work, which applies in Australia and the United States for skilled immigration visas (Boucher, 2014). Lastly, for some visa types in the United States, there are also restrictions on the employment of spouses, which obviously also jeopardize women (Raghuram, 2014).

For several reasons, high-skilled women may be forced into deskilling, which happens when the migrant finds employment in an occupation below their qualification level. Examples can be seen with Mexican women in the United States, where the low-skilled women find employment easier than the high-skilled, who must often accept jobs below their qualification (Flippen & Parrado, 2015). The same phenomenon is observed in Canada with, for instance, Chinese women (Man, 2004) or African women (Creese & Wiebe, 2012). Creese & Wiebe (2012) mention the difficulties in recognizing previous experience, the requirements for Canadian experience, and gendered and racial

discriminations. Similar evidence is found in Australia (Webb, 2015), Spain (Garrido & Codó, 2017), United Arab Emirates (Malit & Oliver, 2013), and many other countries.

Migrant women become a target of double discrimination, by being women and by being migrants - which can become triple discrimination if the race is factored in (Grieco & Boyd, 2003). Therefore, female migrants are usually trapped in a system that sees them as unskilled, resulting in them finding employment mostly in low-skill jobs in women-dominated sectors, meaning a low-income level (Bach, 2009; Grieco & Boyd, 2003). In this sense, the system is just reinforcing gender roles and stereotypes. Another vulnerability refers to the exposure to violence and labour abuses since these sectors are marked by informality (Henríquez & García, 2018).

Migrant women are often drawn to sectors such as domestic service or the care industry (Bach, 2009; Grieco & Boyd, 2003). Two phenomena that contribute to this scenario are the ageing of the population in developed countries and the higher presence of women in the labour market. This creates a new demand for care and domestic service which local women are no longer willing to perform (Henríquez & García, 2018; Näre, 2013), resulting in the “global care chain” phenomenon (Hochschild, 2000). As exemplified by del Rey et al. (2019) in their study regarding domestic migrant workers in Spain, the arrival of those migrants in part allows for local women to pursue high-skilled jobs outside their house. “Hence, and ironically, gender equality among native women is often achieved at the cost of foreign women who replace them in care and cleaning work” (Sassen, 1984, as cited in Napierała & Wojtyńska, 2017, p. 130). This phenomenon exemplifies how many migrant women are basically swapping one patriarchal society for another. The inequalities related to women’s participation in the labour force are exacerbated, instead of the opposite, since the global care chains generate yet another stratification in the job market, based on migratory status and ethnicity (Petrozziello, 2014).

### **2.3 Asylum Policies in the Destination Country**

The third topic of analysis is asylum procedures. The first issue is pointed out by Bloch et al. (2000) - the fact that the 1951 Geneva Convention relating to the status of refugees brings no gender considerations. Its concept of refugees does not explicitly include gender as a reason for persecution<sup>1</sup> (Emmenegger & Stigwall, 2019). Nonetheless,

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<sup>1</sup> “For the purposes of the present Convention, the term “refugee” shall apply to any person who: [...] As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the

the UNHCR has issued different guidelines (UNHCR, 2002; UNHCR, 1991) where it recognizes that acts of violence against women can, under certain circumstances, be considered gender-based persecution. However, they only serve as recommendations for interpretation of the 1951 Convention, which hasn't changed, hindering their practical application (Abreu, 2018).

Moreover, women may be at a disadvantage at different stages of the asylum request process. Due to the lack of attention given to their forms of persecution, they may face more difficulty in providing proof for their claims (Bloch et al., 2000). Asylum policies, as pointed by Freedman (2010, p. 177), "are in fact often undermined by deeply gendered practices which fail to offer protection to women because their persecution is not recognized as such." In many cases, women's claims are denied because the crimes committed against them are considered personal (Patrick, 2014).

Furthermore, women may be driven to apply for asylum as dependent on male relatives, instead of filling an independent application. As argued by Bloch et al. (2000), women must be encouraged to apply in their own agency, in order to avoid female dependency and subordination. Additionally, it is essential that interviews are conducted separately from other family members and by women so that the female refugees feel more comfortable talking about their experiences, which can often be traumatic (Bloch et al., 2000).

Bloch et al. (2000) conducted a study of refugee policies across European countries which shows different approaches to gender in asylum policies. While in the United Kingdom women are encouraged to apply independently, in Spain they are automatically included in the application of their spouses. Furthermore, Freedman (2010) states that, by 2010, the United Kingdom was one of the pioneers in introducing gender guidelines to asylum policies in Europe.

Emmenegger & Stigwall (2019) have developed the Women-Friendliness in Asylum (WFA) Index, which evaluates all member States of the European Union. According to them, a women-friendly policy is "striving for equal treatment throughout the asylum process, recognizing women-specific needs and accommodating individual contexts" (Emmenegger & Stigwall, 2019, p. 1298). The index comprises three dimensions. The first

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protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it" (UNHCR, 1951). The 1967 Protocol later removed the time temporal limits (UNHCR, 1967).

is the application, including indicators related to what the State considers as persecution (if gender is included as an eligible category, or if domestic/sexual violence is included). The second dimension is the procedure (e.g. if women have access to female interviewers and interpreters). The last is the reception, and the indicators cover women's treatment while they wait for the result of their request (e.g. if they have access to health care or separate housing). Naturally, there are great disparities among the European States in what concerns recognizing and responding to the needs of women - on a scale from 0 to 1, Sweden scores 0.9 while Greece scores 0.3 (Emmenegger & Stigwall, 2019).

In brief, besides being more vulnerable to violence and discrimination, women have been increasing their active roles in migration. Therefore, there is an urgent need to understand how gender-responsive the countries' legislation is, in order to evaluate if they reinforce women's vulnerabilities or if they are responsive to the specific needs of women. Gender-blind legislation can ultimately prevent women from accessing their rights. Labour migration policies can either facilitate or hinder women's participation in the labour force and the full realization of their labour rights. Women may find difficulties in accessing the labour market due to discrimination, which may, in turn, contribute to deskilling and to their participation in women-dominated sectors (e.g. care or domestic work), reinforcing gender roles and stereotypes. Lastly, regarding asylum procedures, women may face severe disadvantages when facing gender-blind legislations, including difficulties in claiming their persecution, reinforcement of their male dependence and vulnerability to abuse and rights violations. As argued by Cid (2017), by not recognizing the specific realities of women, including their specific needs or threats, and therefore conducting gender-blind policies and legislations, the State is responsible for perpetuating gender inequality.

### 3. The Case of Argentina

#### 3.1 Legislation

In Argentina, migration policies were dictated by the 1981 General Law of Migrations and Promotion of Immigration, proclaimed during the dictatorship of Jorge Rafael Videla. It had a strong restrictive and repressive character, framing migration as a national security issue. Logically, the State had the central role in controlling and prohibiting migration (Novick, 2012). This was reversed in 2004 with the promulgation of the new Migration Law n. 25.871. The State is then viewed as responsible for guaranteeing the rights of migrants - from the right to migrate to the rights of social services. The new law represents an important shift from the safeguarding of national security to the safeguarding of human rights (Novick, 2012).

Nonetheless, it is visible that gender was not one of the concerns when the law was published. In its 126 articles, there are no references to “women” and only one reference to “sex” and one to “gender”. Nevertheless, these two appear as mere variables together with religion, nationality, ethnicity, and so on, in an article referring to non-discrimination (Law n. 25.871, 2004), which does not reflect a particular commitment to gender equality. The approach misses an opportunity to recognize the specific discriminations women face and the specific conditions under which they migrate.

This absence of gender leads to a barrier to women’s access to basic rights. Because women and the singularities of their reality are not accounted for, it becomes harder for them to fulfil the requirements for legalization (Magliano & Mallimaci, 2018). As noted by Hennebry & Petrozziello (2019), gender discrimination is one of the drivers of gendered migration, so women are already less likely than men to have the necessary qualifications for regulations (Hennebry & Petrozziello, 2019). “Men can more readily access permanent migration pathways reserved for the highly skilled or those with capital, and women are more likely to be concentrated in temporary migration pathways linked to gendered sectors” (Hennebry, 2018, as cited in Hennebry & Petrozziello, 2019, p. 129). This is true for the Argentinian case, where the majority of migrant women perform domestic work or informal work (ILO, 2015), making it harder for them to gather the necessary documents for regularization. Informality becomes a barrier to citizenship. Therefore, despite aiming at facilitating and encouraging the regularization process, the law does not expand the

opportunities for regular migration of women (Magliano & Mallimaci, 2018; Hennebry & Petrozziello, 2019).

On another note, “human trafficking” appears six times throughout the law. The context is always condemning the practice and stating that those involved should be prevented from entering and staying in Argentina (Law n. 25.871, 2004). Nonetheless, it is possible to once more acknowledge a missed opportunity since, even though women are often the targets of human trafficking, no mention of women is specifically made. There is no recognition that women are more vulnerable, let alone an attempt to counter this reality.

One positive side of the 2004 Migration Law, as compared to the previous, is the inclusion of the right to family reunification (Law n. 25.871, 2004). Nevertheless, some aspects are still inadequate when it comes to gender sensitivity. First, the right is only granted to permanent residents (and asylum seekers), and since it takes up to three years to access the permanent residence, this means a long period of separation and disruption for the family. Moreover, family dependents may only request an autonomous residence permit after two years for Mercosur individuals and three years plus another criterion (such as work, study or health) for individuals from outside Mercosur (Solano & Huddleston, 2020). This means that these women remain dependent on their male relatives for a long time. Lastly, the requirements involve proof of income and proof of residence (“Obtener Un Permiso”, n.d.). Again, informality and/or poor working conditions represent a massive barrier.

Another positive aspect of the law is the guarantee of basic rights to all migrants, regardless of their migration status (Law n. 25.871, 2004), which, at that time, represented huge progress if compared to other migration laws in the continent. All migrants are entitled to health and education, even those in an irregular situation (Law n. 25.871, 2004). This should, in theory, reduce the reluctance of seeking basic services in fear of deportation. Nevertheless, when it comes to basic rights, there is no mention of gender equality and sensitivity. In the case of health, when recognizing the right of access for all migrants, the law misses the opportunity to demonstrate an awareness of the singularities of women’s needs. There is no specification of what this right to health includes, and no mention of sexual and reproductive health. “This is important because the opportunities and benefits that migration can afford to women and girls depend on the provision and access to human rights-based and gender-responsive services” (Hennebry & Petrozziello, 2019, p. 129).

Besides representing tremendous progress in terms of human rights, the migration law was modified in 2017 through the Urgency and Necessity Decree n. 70 sanctioned by president Mauricio Macri. Among other measures, the new decree authorizes the detention and deportation of any migrant involved in a criminal process, regardless of the conviction. Expulsion is also authorized in cases where an administrative offence was committed during the immigration process (Decree n. 70/2017, 2017), meaning that irregular entry could lead to expulsion. The changes were considered a setback, limiting again the rights of migrants and increasing the power of the police. The focus shifts again to national security and border control (Caggiano, 2017). An emphasis on targeting irregular migrants with detentions and expulsions may lead to an increase in the search for smugglers for transportation, which in turn makes these migrants more vulnerable to a handful of harms, including trafficking. Needless to say that in this case, women face higher risks than men. This demonstrates a lack of awareness and capabilities and a gender-negative approach that reinforces the inequalities between genders (Hennebry & Petrozziello, 2019).

Therefore, the Argentinian Migration Law fails to deliver a gender-responsive or even gender-sensitive approach. The particular needs of women are not accounted for, which puts them at a disadvantage, especially when it comes to seeking the regularization process. Some aspects of the migration law are also responsible for reinforcing gender inequalities, constituting a gender-negative approach. The fact that Argentina substituted the previous migration law from the dictatorship period more than a decade earlier than Brazil and Chile was a tremendous accomplishment and set a great example for the continent. However, gender considerations have not been included in the law.

### **3.2 Labour Migration**

The Migrant Integration Policy Index (MIPEX) (Solano & Huddleston, 2020) was used for an overview of the labour migration policies of Argentina. On a positive note, the immediate access to the labour market is graded the maximum score (100) since all categories of migrants can work in Argentina. This is positive for women since there is no discrimination based on the type of permit, meaning that women that entered Argentina on a family reunion scheme have the right to work, reducing their dependence on male relatives. Moreover, Argentina does not pose economic resources requirements for permanent residence, which can be a barrier to the regularization of women migrants due to lower income levels (Kofman, 2012).



Nonetheless, according to the Law n. 25.871 (2004), migrant workers are “those who enter the country to engage in any legal, remunerated activity [...]”. As noted by Magliano & Mallimaci (2018), this definition, besides not accounting for gender, also excludes some occupations that are not regulated by the law or are not remunerated. Some of these occupations comprise a great share of migrantwomen (e.g. domestic or sex work).

Furthermore, the law states that promoting prostitution is a reason for being denied entry or stay in the country (Law n. 25.871, 2004). This has great implications considering that many immigrant women in Argentina, especially those coming from the Dominican Republic (Magliano & Mallimaci, 2018), perform sex work. The prohibition of prostitution serves as a disempowerment tool since it compromises their agency and self-determination, reflecting a tendency of victimization of women. “This discourse of moralization and victimization is based on a typical image of the migrant sex worker as a vulnerable and passive victim who needs to be assisted and protected by social workers” (Valadier, 2018, p. 504). As such, the prohibition of prostitution, with the intention of protecting women, can potentially increase their vulnerability. Instead of regulating, guaranteeing basic labour rights and assisting these women, such prohibition only contributes to generating fear and incapacity to report violent and criminal behaviour (Anne McClintock, 1993, as cited in Valadier, 2018). Migrant sex workers then see themselves trapped in informal and often dangerous work conditions. In this aspect, the law n. 25.871 can be considered as having a gender-negative approach since it contributes to reinforcing stereotypes and gender inequalities (Hennebry & Petrozziello, 2019).

It is also important to highlight migrant women’s reality in Argentina. According to the last census, women comprise 53.8% of the migrant population (INDEC, 2010). They have on average a lower educational level and work longer hours as compared to local women (Ministerio de Trabajo, Empleo y Seguridad Social [Ministry of Labour, Employment and Social Security], 2017; Cortes, 2017). Another issue is informality, which in 2011 was at a rate of 73% for migrant women, compared to 63% for migrant men and 45% for local women (ILO, 2015). Besides, migrant women’s income is on average 29% lower than those of native women - which can be explained by their higher presence in low-income jobs. In Argentina, 37% of them work in the domestic service sector (Ministerio de Trabajo, Empleo y Seguridad Social [Ministry of Labour, Employment and Social Security], 2017). The rate of informality in this sector was 82% in 2011, 15% higher

than the rate for the whole migrant population (ILO, 2015). Some reasons for this are the fact that

Domestic work is an activity that takes place within households and, therefore, is difficult for the competent authorities to control in the labour inspection. For this reason, domestic workers have a high degree of difficulty in organizing themselves, since they work in isolation in each household so that labour relations are usually managed privately (ILO, 2015, p. 140).

Nonetheless, Argentina has demonstrated a concern with the situation of domestic workers, which translated into the Professionalization Programme of Service in Private Homes (Rodríguez Nardelli, 2016). Moreover, Argentina approved the law n. 26.844 (2013) which regulates registration and salaries and extends to domestic workers the same labour rights guaranteed to all other workers (Rodríguez Nardelli, 2016). Furthermore, there were also dissemination campaigns and training programmes aimed at empowering domestic workers and providing them with information about their rights, as well as fiscal incentives for employers to regularize the employment of domestic workers (ILO, 2015). Although not directly targeted at migrant women, the measures also benefit them since a great share of them are drawn into the sector.

These initiatives can be coupled with the 2006 Patria Grande Plan which was a massive regularization programme carried out by the Argentinian government. According to Cortes (2017), one of the main outcomes was the facilitation of access to registered work - informality rates dropped more among migrants than locals in the construction and domestic services sector. Another measure that brought benefits for migrant women was the facilitation, with the 2004 Migration Law, of the entry and legalization of migrants from border countries, since they represent the majority of migrant women arriving in Argentina<sup>2</sup>. According to ILO (2015), these new migration regulations coupled with labour policies for domestic workers and fiscal policies for employers are examples of better coordination by the Argentinian government resulting in better integration of female migrant domestic workers. The gains from those efforts were tangible. Between 2004 and 2013, the number of registered migrant workers increased by 25% (Cortes, 2017), while the number of registered domestic workers four folded (ILO, 2015). However, despite the improvements, ILO (2015) calls attention to the need to improve the monitoring of the

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<sup>2</sup> More than 80% of the migrants in Argentina come from South American countries (INDEC, 2010).

measures proposed, as well as to enhance training efforts, encouraging the organization of unions in order to empower female migrant domestic workers.

On a negative note, according to MIPEX (Solano & Huddleston, 2020), there is no targeted training on the national level for immigrants or programmes for employers encouraging the hire of immigrants. These could be specifically beneficial for women who, as seen before, face disadvantages when it comes to labour market integration. Another downside is the very restricted access to cash transfers and pension systems by migrants. Some family pensions, such as the Universal Transfer for Children, require that the parents live in Argentina a minimum of three years, even for children born in Argentina (Solano & Huddleston, 2020; Cortes, 2017). In the case of non-contributory pensions, the requirement is 40 years of residence in the country. These restrictions naturally affect migrant women since they often migrate with their children, and often have lower income than men.

Summing up, despite many efforts to improve the working conditions of migrants, especially domestic workers, Argentina does not have specific labour migration policies, let alone gender-specific policies (ILO, 2017). Although the efforts mentioned made a contribution to a great share of female migrant labourers, Argentina is lacking recognition of female migrants working in other sectors besides domestic work and also those looking for employment. As pointed by Cortes (2017, p. 14), “the country’s labour market is still highly segregated by gender and segmented by income levels; [...] Segregation among migrants continued, although working conditions had improved somewhat.” Therefore, there is still no relevant effort to counter the participation of migrant women in stereotyped occupations. On the other hand, this might turn out to be a complex task since the majority of female migrants arriving in Argentina have low education levels<sup>3</sup>, which may be one of the reasons why they are attracted to low paying female-dominated occupations. Due to the scarcity of highly educated migrant women, deskilling is also not a relevant phenomenon among women arriving in Argentina. Lastly, it is imperative that Argentina pays more attention to migrant women, and keeps working on empowering them with information, especially those in other fields besides domestic service. Efforts in the direction of professionalization courses, seminars and workshops might also bring positive results in improving their social capital and resulting in better working conditions.

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<sup>3</sup> Only 16.4% of the female migrants interviewed in the last national household survey had finished higher education (INDEC, 2020).

### 3.3 Asylum Policies

The main directive regulating asylum in Argentina is the 2006 General Law of Recognition and Protection of Refugees n. 26.165. The definition of refugee brought by the law only mentions fear of persecution based on race, religion, nationality, belonging to a certain social group or political opinion (Law n. 26.165, 2006), mirroring the definition presented in the 1951 Geneva Convention (UNHCR, 1951). Although there is no clear mention of gender-based persecution, some authors and international organizations (Patrick, 2014; UNHCR, 2002; European Council on Refugee and Exiles, 1997; Freedman, 2010) defend that women may be considered a social group since they share particular characteristics that expose them to differential treatment and discrimination.

Besides one single mention of “sex” simply used as a variable, together with ethnicity and religion, the refugee law had in total three mentions to “women”. Two of them provided that women should receive psychological support in the process in case they were victims of violence or similar circumstances. The third was a mention of the UNHCR Guidelines on the Protection of Refugee Women. This exemplifies that when it comes to asylum requests Argentina is more sensitive to the needs of women, as compared to its migration law. There is an explicit concern with gender-based violence, which is translated into the recognition of the possibility of gender-based persecution.

ARTICLE 53. - In the case of women or minors who have been victims of violence, especially if they are unaccompanied, the Commission will seek specialized psychological care for them, and during the procedure, the UNHCR recommendations formulated in the Guidelines for the protection of refugee women and guidelines on gender-based persecution will be observed (Law n. 26.165, 2006, p. 12).

As stated in the previous chapter, gender-sensitive assistance is crucial for women seeking asylum since they have often gone through traumatic and sensitive experiences. The right to choose the gender of the interviewer is also recognized by UNHCR Argentina & the Comisión Nacional para los Refugiados [National Commission for Refugees] (2018), although it mentions that the request must be backed up by grounded motives. The exact meaning of grounded motives is left open for interpretation, which makes a crucial difference for the gender sensitivity of this approach.

The law also recognizes the right to a translator during the process. Besides, the Comisión Nacional para los Refugiados [National Commission for Refugees] (n.d.)

explicitly mentions the right of non-discrimination on the grounds of being a woman, and importantly, the right of women to file an individual application, independent of their male relatives. It also states that the asylum request can be made on the grounds of fear of sexual or gender-based violence.

Another major advance of this law is the flexibility of the concept of family. While in the migration law, family reunification is valid only for spouses, parents and children, in the refugee law the concept is broader, linked to affection ties, country values and not bound to legal recognition. With this, Argentina is recognizing the greater realm of cultural definitions of family that may differ from its national customs.

ARTICLE 6 - [...] the effects of the recognition of a refugee status will be applied by extension to their spouse or to the person with whom the refugee is linked by reason of affection and coexistence, ascendants, descendants and collaterals in the first degree that depend on him economically. The competent authorities will resolve the requests in each case and in a well-founded manner, taking into account the current law, the needs invoked by the applicants and the cultural values of their countries of origin. The decision to reject an application based on the principle of family unity may not be based on the lack of legal recognition of the relationships invoked (Law n. 26.165, 2006, p. 2).

Another very important aspect is the fact that official proofs are not compulsory for the determination of refugee status.

In order to consider the facts proven, it will be enough that there are sufficient indications. If direct evidence cannot be collected, the authorities, in their evaluation, may be based in a supplementary manner on indications and assumptions and on the credibility of the applicant, in which case it will be appropriate to apply the benefit of the doubt in their favour (Law n. 26.165, 2006, p. 11).

As discussed in the previous chapter, a strong focus on proofs may leave women at disadvantage, so recognizing the difficulties to prove the claims and providing alternatives may be an example of a gender-responsive approach. Besides relying on assumptions or credibility, the directive also foresees the authorities' duty to perform research on the country's background in order to back up applicants' claims.

The law also recognizes the right to humanitarian assistance to individuals who file an asylum request, including assistance with housing, food, health and education (Law n.

26.165, 2006). However, no further details are provided determining the specific conditions of women in regards to these procedures.

On a negative note, there is one rather controversial article (art. 10, para. b.) that establishes that individuals who come from countries that recognize the rights and duties of their nationals will have their request denied since they do not need international protection (Law n. 26.165, 2006). This article may prove itself very harmful for women who are victims or potential victims of gender-based violence for not abiding by social norms (translated into national law).

In conclusion, it is possible to observe that many of the indicators of the Women-Friendliness in Asylum Index (WFA) (Emmenegger & Stigwall, 2019) are present in the case of Argentina. For instance the recognition of gender-specific persecution; the access to legal advice, translator and female interviewers; and the access to humanitarian assistance. However, many of these indicators remain on general terms and neither the law nor the general policies or the regulation of the National Commission for Refugees, provide specific details. There is, for example, a recognition of gender-specific persecution. However, the law explicitly states neither gender as a category in asylum eligibility nor examples of gender-specific persecution (e.g. trafficking, female genital mutilation or forced marriage). The access to female interviewers is also conditioned to justified need, yet again there is no definition of what exactly this means. Lastly, while access to humanitarian assistance is recognized, the conditions and procedures are not described. Therefore, when it comes to asylum, Argentina has made great progress and is on a stable path to a gender-responsive approach; nonetheless, there is still a long way to go to achieve full gender equality and for the rights and needs of female asylum seekers to be recognized.

## 4. The Case of Brazil

### 4.1 Legislation

In 1980, Brazil approved its Foreigner Statute (Law n. 6.815, 1980), which reflected the ideology of the military dictatorship that was in place. Similarly to the Argentinian case, the law expressed a restrictive and repressive character, focusing on national security. It also refers to migration as a means to attract specialized workforce (Frazão, 2017). Immigrants were seen as outsiders, as people who would never be fully integrated in Brazil and should therefore be seen as a potential threat (Assis, 2018). It was only in 2017 that the new Migration Law (n. 13.445) was approved. The aim was to adapt the legislation to the increased migratory movements towards the country (Uebel & Abaide, 2017) and also aligning the legislation with the democratic principles and human rights treaties that the country had ratified in the previous decades (Assis, 2018). The new law puts people as the end goal and not as a means of reaching economic progress (Costa et al., 2019). It also recognizes migration as a human right and views migrants no longer as outsiders. This is already evidenced in the title - it ceases to be a “foreigner” law and becomes a “migration” law.

However, the new law was not approved without shortcomings. Notably, all the migration bureaucracy is still handled by the Federal Police, which can instigate fear among the migrants, and make it harder to acquire documents (Moreira, 2018). Moreover, the operation “Acolhida” which coordinates the Venezuelan influx in the Brazilian border is managed by the army. The question that arises is how de-securitized the migration policies are in practice after the new law.

Another limitation is the complete absence of gender considerations. Remarkably, there are no mentions in the law of gender-related terms such as women, gender or sex whatsoever. Gender was left out even from anti-discrimination statements that included race, religion, nationality, and so on. However, for vulnerable groups, assuming a position of neutrality also means assuming a position of conformity. By not including gender in its migration regulation, the State is choosing to ignore all the difficulties and particular oppressions that migrant women face.

Furthermore, it states that residence could be granted for individuals who were “victims of human trafficking, of slave labour or violation of rights aggravated by their

immigration status” (Law n. 13.445, 2017, p. 10). As in Argentina, the Brazilian legislation misses an opportunity to include gender when acknowledging the vulnerable conditions of human trafficking, since this is an issue affecting disproportionately more women than men.

Drawing other parallels with Argentina, the Brazilian law also recognizes the universal right to health and education, regardless of the migratory status (Law n. 13.445, 2017). The rights are no longer attached to regularization, representing progress as compared to the Foreigner Statute. Yet again, it misses the opportunity to specifically mention gender equality or the right to sexual and reproductive health. On the same note, it guarantees protective measures for victims and witnesses of crimes and rights’ violations, without a mention of violence against women.

The law offers no consideration for the fact that a large portion of migrant women in Brazil is employed in informal jobs (Cavalcanti et al., 2020). Sometimes, the lack of legal knowledge or proper documentation can lead to situations of exploitation, as exemplified by Soledad Requena, from the Center of Migrant and Refugee Women, in an interview with Guagliano (2020). Again, informality can function as a barrier to regularization (Magliano & Mallimaci, 2018) and there is nothing in the migration legislation to protect these women.

Moreover, concerning family reunification, the law foresees the right to spouses and partners (among others) “without any discrimination”, which appears at first as a good thing for LGBTQIA+ families. However, at the same time, the law suffered an important veto: “The granting of a visa or residence permit for the purposes of family reunion may be extended, through a reasoned act, to other hypotheses of kinship, affective dependency and sociability factors” (Câmara dos Deputados [Chamber of Deputies], 2017). The veto represents a setback for families with a modern arrangement, resonating with a more traditional concept of family which does not include affective ties (Assis, 2018), going against global progressive tendencies.

On the other hand, according to MIPLEX (Solano & Huddleston, 2020), “immigrants in Brazil enjoy ‘family-friendly’ policies” since the right is granted for dependent and even non-dependent relatives and there is no minimum residence period required to request family reunification - it may even be done simultaneously with the residence permit request of the sponsor. This means that the Brazilian policy does not



force families to be apart for long periods. Moreover, no proof of resources is required, which can particularly benefit migrant women who are often victims of gender pay gaps<sup>4</sup> and often have lower economic capacity than men (Hennebry & Petrozziello, 2019).

In conclusion, despite achieving great progress in terms of human rights, by for example guaranteeing basic rights to all migrants and approving family-friendly policies, the Brazilian law neither recognizes nor addresses the vulnerabilities of women, hence failing to deliver a gender-responsive approach. There is a long way to go in terms of fully recognizing and responding to migrant women's needs and guaranteeing that their rights are being fulfilled.

## **4.2 Labour Migration**

Between 2010 and 2019, women composed around 41% of the long-term immigrants in Brazil, still characterizing a highly masculine migration, although this number has been increasing steadily throughout the years. Surprisingly, only 22% of these women came in a family reunification scheme (Cavalcanti et al., 2020). This evidences the growing tendency of independence among migrant women. Moreover, most of them came from Latin America, especially from Venezuela, Haiti, Cuba and Argentina. Regarding education, approximately 50% had completed high school while 22% had completed higher education (Cavalcanti et al., 2020).

According to MIPLEX (Solano & Huddleston, 2020), Brazil has received the maximum score (100) when it comes to labour market access, since migrants have the right to employment immediately from their arrival in the country, being entitled to the same labour rights as nationals, with no discrimination against any migratory category. Moreover, the access to social security and social assistance benefits is also not attached to the migratory condition, again facilitating access to rights.

An important initiative was the approval of the National Policy on Immigration and Protection of Migrant Workers in 2010 (Conselho Nacional de Imigração [National Immigration Council], 2010). Among the guidelines, there is one directed to migrant women:

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<sup>4</sup> In 2019, migrant men earned around 15% more than migrant women in Brazil (Cavalcanti et al., 2020).

8. Migrant women must be guaranteed specific attention, aiming at their social insertion under equal conditions, especially in the labour markets, their role and their situation of greater vulnerability in the processes of international migration (Conselho Nacional de Imigração [National Immigration Council], 2010, p. 5).

The proposal also highlights the need to include migrant women in the formulation, implementation and evaluation of policies. It also states that the State should invest in measures to protect migrant women in the labour market, as well as in staff training to deal with female migrants' needs (Conselho Nacional de Imigração [National Immigration Council], 2010).

Nevertheless, those guidelines do not translate into significant policies in practice. Migrant women in Brazil face several difficulties when it comes to work or search for work. While it is hard to find adequate work, the ones who do face high levels of instability and turnover, as well as high gender wage gaps and high levels of informality (Cavalcanti et al., 2020). For instance, while only 47% of the migrant workers that participated in the survey conducted by Fernandes et al. (2020) were inserted in the formal labour market, women represented only 30% of that number (Cavalcanti et al., 2020). In a study conducted by Dutra (2013) with twenty Paraguayan women in São Paulo, fifteen of them were informal workers with an irregular migratory status, even though they have the right to migrate regularly due to the Mercosur agreements. Most of them declared that they did not understand the regulation process, evidencing the need to better inform migrant women about their rights.

Moreover, another obstacle is the precarious conditions of the temporary protocol handed to migrants and asylum seekers while waiting for their official documents. Since it is a mere piece of paper, many companies do not recognize it as an official document that allows them to work. Migration authorities also point out the difficulties in having diplomas recognized, which can result in deskilling (Torelly et al., 2017). All of these factors contribute to worsening the rates of informal employment.

Racism, xenophobia, labour abuses and labour in slave-like conditions are other sources of concern (Mejía & Cazarotto, 2017; Torelly et al., 2017). In many cases, employers take advantage of the vulnerable situation of immigrant workers, especially women. The reason is often the companies' quest for cheaper labour combined with the migrants' lack of knowledge about their rights, and their desperation to find a job. The

chances of abuse are even higher for irregular migrants (Torelly et al., 2017; Simões & da Luz, 2018; do Prado & Coelho, 2015). An alarming study conducted by the NGO Reporter Brasil (2019) concluded that 93% of the women rescued from slave-like labour in São Paulo were migrants. Soledad Requena, from the Center of Migrant and Refugee Women, explained in an interview that a great portion of these women are working in illegal textile shops (Guagliano, 2020). They often have low levels of education, lack proper information regarding their rights and are often undocumented, which increases their vulnerability. She explains that it is harder to rescue women since it is harder for them to report (Guagliano, 2020).

The care industry paradigm explored in previous chapters cannot be applied for an analysis of female migration in Brazil, since the care and domestic sectors in the country are already saturated by Brazilian women (Cavalcanti et al., 2020). Alternatively, most working female migrants are inserted in the service or manufacturing industry<sup>5</sup>, or at a lesser degree, in the science and art field. This can be explained by what Portes (2003, as cited in Cavalcanti et al., 2014, p. 20) calls an “hourglass” demand for migrant labour, meaning that there is a need for highly qualified professionals and, at the same time, for workers in low-skilled sectors. Hence, migrants with average qualifications tend to struggle more to find adequate work and are often forced into deskilling (Cavalcanti et al., 2014). In a study conducted by UNHCR (2020), 60% of the female refugee respondents stated that they do not use their original profession in their current job.

Studies conducted by Mejía & Cazarotto (2017) and Handerson & Joseph (2015) with Haitian women associate this high demand in low-skilled sectors with the unwillingness of nationals to perform certain jobs, as well as with discrimination against migrants. Connell (1993, as cited in Cavalcanti et al., 2020) mentions for example “the prevalence of Haitian women in the job sectors called in the migration literature as 3D jobs - dirty, dangerous and demeaning” (p. 131), for instance as cleaning ladies or hotel maids. According to the studies by Mejía & Cazarotto (2017) and Handerson & Joseph (2015), the phenomenon of deskilling causes frustration, since often these women had a better status in Haiti and now have to perform activities that they consider downgrading. In other cases, working following orders resulted in conflicts with the employers (Mejía & Cazarotto, 2017). Those conflicts, coupled with the higher rate of pregnancy among Haitian women,

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<sup>5</sup> Between 2011 and 2019, the rate of participation of female migrants grew 519% in the sectors of service and trade in shops and markets and 320% in the sector of industrial manufacturing and services (Cavalcanti et al., 2020).

sometimes resulted in reluctance by employers to hire migrant women. It is common among them to use pregnancy as a way of obtaining legal residence in the country (Mejía & Cazarotto, 2017).

Despite the aforementioned issues in Brazil, no evidence of particular labour migration policies were found (ILO, 2017), although several measures were regulated through, for instance, the migration law, and several initiatives were taken at municipal levels<sup>6</sup>. Specifically, there is also no formal policy targeting female migrants (Ferreira & Reinholz, 2020) as well as no targeted training programmes for migrant women (Solano & Huddleston, 2020), although they are mentioned in the National Policy on Immigration and Protection of Migrant Workers (Conselho Nacional de Imigração [National Immigration Council], 2010).

Difficulties in finding proper work can mean several consequences for migrant women. The first is the frustration associated with deskilling and the lower socioeconomic status as compared to the one they had in their home countries. The second is the frustration associated with not being able to send remittances to the family they left behind (Mejía & Cazarotto, 2017). Moreover, another direct consequence is the poor housing conditions due to difficulties in providing proof of income (Oms, 2020).

Some suggestions to improve the conditions of immigrant workers are the facilitation of access to credit in order to boost entrepreneurship; the increase of companies' social responsibility with migrants; the promotion of campaigns in companies to increase awareness of migrants' rights and capacities and the validity of the temporary protocol; the promotion of policies to encourage companies to hire migrants through fiscal incentives; and, most importantly, the increase in efficiency in monitoring and inspection of labour conditions (Torelly et al., 2017). Those initiatives could be particularly beneficial to women since they are more vulnerable to labour abuses and unemployment.

### **4.3 Asylum Policies**

Asylum policies in Brazil are regulated through the Law n. 9.474 (1997), which follows many principles from the 1951 Geneva Convention, including the definition of refugee. Similarly to the Argentinian case, the law does not include gender as a specific

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<sup>6</sup> For instance, São Paulo promotes awareness campaigns against xenophobia and training programmes for staff working with migrants. The city approved in 2016 the first Municipal Policy for the Immigrant Population in Brazil (Torelly et al., 2017; França et al., 2019).

category for persecution, although many authors and organizations (Patrick, 2014; Freedman, 2010; UNHCR, 2002; European Council on Refugee and Exiles, 1997) argue that it can fall under “social group”. Moreover, there are no specific mentions of gender-related terms in the refugee law whatsoever.

When it comes to the demand for proof, the law is vague and only states that “relevant evidence” should be indicated along with a declaration of the circumstances and facts supporting the claim (Law n. 9.474, 1997). It remains open to interpretation how solid this evidence must be, and how this affects women asylum seekers.

However, on a positive note, the directive foresees the right to an interpreter for interviews, as well as guarantee the confidentiality of the process (although it does not mention confidentiality in the cases of gender violence, specifically) (Law n. 9.474, 1997). According to UNHCR (n.d), interviewees can also choose the gender of the interviewer. As previously seen, these measures are crucial to a gender-responsive approach, since women may be more reluctant to share their story, especially if it involves abuse or sexual violence (Bloch et al., 2000).

Furthermore, refugee women in Brazil have the same rights as nationals (UNHCR, n.d.), and therefore, are protected by the same laws, for instance, the Law Maria da Penha (Law n. 11.340, 2006) that criminalizes domestic violence. They also have the same rights when it comes to health access, including access to sexual and reproductive health (UNHCR, 2011). The booklet developed by UNHCR (n.d.) for asylum seekers also states specifically that

In Brazil, men and women have the same rights and any form of violence against women due to gender or sexual orientation is a crime. Women who are victims of violence have the right to receive medical assistance and formalize their report (UNHCR, n.d., p. 6).

The refugee law also foresees the right to family reunification, stating that the “effects of the status of refugee are extensive to the spouse, ascendants and descendants, as well as other members of the familiar group that depend economically on the refugee” (Law n. 9.474, 1997, p. 1). This demonstrates a flexible definition of family that can be sensitive to diverse family configurations. It is also positive in the sense that there is no need to wait until the refugee status is officially granted (a process that can take a few years), meaning that the law does not impose long periods of distance and disruption of family life.

Moreover, since 2000, Brazil has recognized asylum requests on the grounds of sexual orientation and gender identity, including those individuals in the “social group” category of asylum claims. In 2018, the country became the fourth in the world to publish data on asylum requests on those grounds (behind England, Norway and Belgium) (Ministério da Justiça e Segurança Pública [Ministry of Justice and Public Security], 2018). Additionally, a bill presented in 2019 (n. 6.499) proposed the formal inclusion of “sexual orientation” as another reason for recognizing asylum claims (Bacelar, 2019). This evidences that Brazil is moving forward when it comes to making its migration and asylum laws more inclusive.

In conclusion, the Brazilian asylum policies can be analysed in light of some indicators of the WFA Index (Emmenegger & Stigwall, 2019). First, looking on the bright side, Brazil is very inclusive when it comes to family reunification, and does not limit the concept of family. Additionally, the procedure is substantially women-friendly since women asylum seekers have the right to legal advice free of charge, as well as female interviewers and interpreters. On the other hand, several gaps become evident. Brazil neither recognizes gender as a category of eligibility nor explicitly recognizes different forms of gender-based persecution, apart from LGBTI cases. Also, concerning reception, humanitarian assistance (including housing, health and education) is mainly in the hands of UNHCR and NGOs. Although assistance is usually provided, the right to assistance is not prescribed in the law. To sum up, although the asylum-seeking process is quite inclusive and Brazilian policies are far from discriminating against female asylum seekers, they still need to go a long way in terms of becoming gender-responsive.

## 5. The Case of Chile

### 5.1 Legislation

The Chilean migration legislation is composed of several disarticulated and inconsistent migration policies (Acosta et al., 2018; Correa, 2019). One of the first attempts to regulate migration was the Law on Foreigners (Law n. 1.094, 1975), adopted during the Pinochet dictatorship. Similarly to the laws in Argentina and Brazil, it had a strong restrictive approach and focused on national security (Pavez-Soto, 2017; Trincado, 2020), which is evidenced by article 2: “entry to the country of certain foreigners may be forbidden for reasons of interest or national security” (Law n. 1.094, 1975, p. 1). Migrants are seen with suspicion, and there is a strong focus on expulsions.

The law is the oldest migration law still in force in the continent. Since it dates back to the dictatorship period, it can be considered outdated, not corresponding with the current migration patterns and not in line with the several international agreements signed by Chile (Ducoing, 2017). Therefore, several bills were proposed and several instruments were adopted in an attempt to replace the law or to make up for its lack of instructions in what concerns access to basic rights (Pavez-Soto, 2017; Correa, 2019; de las Heras, 2016). This produced a chaotic scenario in which migration regulation was inefficiently scattered through different instruments.

As expected, gender is completely left out of this legislation. The only mention to women comes in article 32:

The foreign woman, married to a Chilean, who is granted a Chilean passport or is incorporated in the passport of her spouse, in order to enter Chile in accordance with the provisions of the Consular regulations, will be considered a temporary resident for the purposes of this decree-law (Law n. 1.094, 1975, p. 8).

There are two signs of sexism in this statement. First, by stating “foreign woman, married to a Chilean”, it assumes that only women would immigrate to join Chilean husbands. Second is the fact that the wife of a Chilean, even with a Chilean passport, is still considered a temporary resident.

Moreover, the law does not foresee a family reunification scheme, stating vaguely that some visa categories can be extended to family members, without providing a definition of family (Law n. 1.094, 1975). Additionally, MIPEX (Solano & Huddleston,

2020) classifies Chile as “halfway favourable” when it comes to family reunification since “sponsors who can cover the costs of their family can immediately apply to reunite, but face uncertainty due to the highly discretionary process and their family’s insecure status, with no right to an autonomous residence permit.” The fact that the permit given is dependent on the sponsor leaves women in a vulnerable situation where their legal status is attached to the relationship. This way, they might lose the permit and be deported if the relationship ends or if their partner is deported (ILO, 2010, as cited in Asociación de Municipalidades de Chile [Chilean Municipalities' Association], 2019, p. 9). MIPEX (Solano & Huddleston, 2020) also highlights the issue of the possibility of irregular migration and irregular work being used as “grounds for rejecting, withdrawing or refusing to renew status”, giving a grade zero to Chile in this category.

Lastly, the law introduces a very limited number of migratory categories - one of them is residence under a working contract (Law n. 1.094, 1975). Henríquez & García (2018) point out that this represents a great danger according to international law: the need for a prior contract puts employers at advantage leaving space for abuse in the working conditions. Based on their double discrimination (Grieco & Boyd, 2003), women are more vulnerable to those abuses than men. Additionally, according to the law (Law n. 1.094, 1975), a two-year stay with a job contract is one of the prerequisites to apply for a permanent residence - representing another aspect in which the reality of women was not accounted for. It is challenging to remain in the same job for two years in markets with a heavy turnover pattern, such as domestic service, and this criterion ends up encouraging migrant women to accept precarious work conditions in order not to lose the contract (Stefoni, 2011).

This way, Cid (2017) notices that the discrimination suffered by migrant women in Chile is reinforced by the State since it does not take any action to prevent or counteract the injustices faced by women. Among the many initiatives to complement or modify the Law on Foreigners, none of them translates into an attempt of incorporating a gender approach<sup>7</sup>. By not taking direct action, the State is responsible for the reproduction of

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<sup>7</sup> Although the law remained unchanged when it comes to gender, there was one initiative consisting of facilitating female migrants and refugees’ access to a protection network aimed at victims of domestic violence. For women with an irregular migratory status, the agreement also facilitates access to housing (Resolución Exenta N° 80.388 de Diciembre 2009, as cited in ILO, 2017; ILO, 2016b; Asociación de Municipalidades de Chile [Chilean Municipalities' Association], 2019).



gender inequalities characterizing, therefore, a gender-negative approach (Hennebry & Petrozziello, 2019).

Recently, in April 2021, the new Migration and Foreign Affairs Law was finally promulgated after eight years since its proposal (Correa, 2019). It will, however, only come into force after the publishing of its regulation. Despite the inclusion of some guidelines addressing basic rights' access, the new law is again one that frames migrants as threats to national security (Trincado, 2020). President Sebastián Piñera referred to the need to “tidying up the house” and emphasized the fight against irregular migration (Acosta et al., 2018; Trincado, 2020).

The greatest difference from the previous law is the inclusion of migrants' rights, such as health and education, regardless of their migratory status (Law n. 21.325, 2021). Moreover, besides decriminalizing irregular migration, the new law also brings a non-discrimination focus and an aim to facilitate the regularization process. Regarding family reunification, it recognizes the right to parents, children, spouses, partners or those “with whom you maintain a relationship that, in accordance with applicable law, produces effects equivalent to marriage” (Law n. 21.325, 2021).

Differently from the previous, the new law brings several mentions to gender terms. There is even the inclusion of a “special concern” with vulnerable groups including women. In total, there are six mentions of “women”, five mentions of “gender”, and one of “sex” (which nonetheless comes in an anti-discrimination statement not expressing particular concern with gender). Still, the improvements cannot be ignored. For instance, in the 1975 Law, refugees could not be sent back to countries where their life was threatened due to their race, religion, nationality, social group or political opinion (Law n. 1.094, 1975), to which the new law adds sexual orientation and gender identity (Law n. 21.325, 2021). This is a major win since it allows women and LGBTQIA+ individuals to seek asylum based on these claims.

Moreover, in article 32 regarding the circumstances in which entry in the country will be forbidden, the fifth item mentions those who have been convicted by a list of crimes such as genocide, terrorism, human trafficking, etc. Positively, the list also includes femicide (Law n. 21.325, 2021). Additionally, article 71 states that women that are victims of trafficking or gender-based violence are eligible to request temporary residence in the country. Article 13 complements:

The State will promote the respect and protection for foreign women, whatever their immigration status, so that at all stages of their migration process they are not discriminated against or violated on the basis of their gender. [...] Pregnant women, victims of human trafficking, or of gender or domestic violence, or object of migrant smuggling, will have special treatment by the State. By virtue of the foregoing, the National Migration Service may deliver a visa that regulates their permanence (Law n. 21.325, 2021, p. 4).

The new law brings yet another article that empowers women. Article 77 item IV states that "temporary residents as dependents, victims of crimes constituting domestic violence who have initiated judicial proceedings that end by means of a conviction, may request a temporary residence permit which will be granted without further processing, as independent holder" (Law n. 21.325, 2021, p. 17). This means that women who suffer domestic abuse do not have to keep silent due to fear of losing their legal status and, most importantly, do not have to remain dependent on their abuser.

In essence, the new migration law is much further along the gender-responsiveness scale than the previous. There are many dispositions that favour migrant women, besides some direct provisions envisioned to improve migrant women's living conditions and access to rights. With the recent promulgation, Chile moves ahead of Argentina and Brazil in terms of its gender approach to migration, being the first of the three countries to include articles expressing solid concerns to women and gender - even though they need to be interpreted with care to determine whether they translate into gender-responsive action.

As pointed out by Henríquez & García (2018) the gender perspective is yet to be adopted in the regulation of rights. The improvements are not enough and the law could be more specific and directly target issues that affect women, especially concerning their double discrimination. "Chile lacks a more latent regulation with a gender perspective since it does not include this issue in its internal legislation and does not adhere to the most complete and specific international regulations existing to date" (Henríquez & García, 2018, p. 32). This international regulation is, for instance, the Migration Pact, which Chile did not sign. The pact, which defends migration as a human right and has gender perspectives in its main guidelines (UNGA, 2018), was said not to be in accordance with the interests of Chile (Henríquez & García, 2018).

## 5.2 Labour Migration

The majority of migrants in Chile come from Venezuela, Peru, Haiti, Colombia and Bolivia, characterizing a regional pattern of migration. Women account for approximately 49% of the migrants (INE, 2020). As it is the case in the other countries, Chile witnesses the phenomenon of feminization of migration. There is a shift from the tendency to migrate for family reunification to a tendency to migrate in search of better work (Campos et al., 2012). Moreover, while the rate of participation in the labour force is around 47% for Chilean women, for migrant women it is around 68% - 20 points higher. (CASEN, 2015, as cited in ILO, 2016b). However, being better inserted in the market does not necessarily mean that migrant women are in a better position. Their higher participation can be explained by the fact that, while nationals are often more selective, migrants usually have an immediate need to find a job in order to be able to sustain themselves, send remittances home, and regularize their migratory status. Therefore, migrants are usually more willing to take on precarious jobs (Campos et al., 2012; ILO, 2016b; Gallardo, 2019).

MIPEX (Solano & Huddleston, 2020) classifies Chile as “slightly unfavourable” when it comes to labour market mobility (placed at the bottom ten countries), due to several restrictions and lack of support faced by migrants. One of the restrictions is precisely the need for a job contract in order to access working visas. Being so, women on work visas are extremely vulnerable, especially before they are issued the permanent residence permit - which can take years (Segovia et al., 2018). During this period, their regular status is dependent on the job contract, and in the past, the possibility of changing employers was not allowed without the need to restart the whole process, which increased the chances of accepting labour abuse (Caro et al., 2012). “This situation gives excessive power to the employer over the worker, who must accept any conditions imposed in order to keep the job and thus access a definitive visa” (Caro et al., 2012, p. 654).

The urgent need for a job contract is also one of the reasons several migrants take jobs below their qualification level (ILO, 2016b; Gallardo, 2019; Segovia et al., 2018). According to the 2017 census (INE, 2017), almost 26% of migrant women declared to have finished at least one course of university level, while another 22% completed at least one course of technical education<sup>8</sup>. Interestingly, migrant women in Chile have on average

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<sup>8</sup> The educational level, however, depends heavily on nationality. According to a study conducted with migrants who had their permanent residence granted in 2018, 41% of Venezuelan and 26% of Argentinian women have completed higher education. On the other hand, the rates drop to 3% for

1.6 more years of education than Chilean women (12.5 against 10.9) (INE, 2018). This better education does not guarantee them better working opportunities (Stefoni, 2015, as cited in ILO, 2016b; Campos et al., 2012), evidencing a waste of human capital (Campos et al., 2012).

Migrant women are mainly concentrated in the services sector, filling the positions that the nationals are not willing to take (Campos et al., 2012). According to data from 2015, the main sectors employing migrant women were “domestic service (28%), trade and social and personal services (both with 19%), hotels and restaurants (14%) and real estate and business activities (7%)” (Observatorio Laboral de Chile, 2016, as cited in Gallardo, 2019, p. 52) In her research, Gallardo (2019) asks female migrants if they feel like migrant women take on jobs that are traditionally female. While some point out that this was more accentuated in the past, some agree that it is common to be inserted in “female” sectors, especially in the beginning. For instance, their rate of participation in domestic service is around 8.5%, more than doubling the rate of nationals (3.4%) (CASEN, 2015, as cited in ILO, 2016b). Domestic service is seen as an entry point to the labour market since it allows for a fast placement that facilitates regularization in the country (Gallardo, 2019). As discussed in previous chapters, the domestic sector is very prone to abuses and exploitation, mainly due to the lack of regulations and the private nature of the work. And as in other countries, domestic service is surrounded by prejudice, being characterized as a low-class occupation reserved for the low educated (Segovia et al., 2018).

Employers in Chile often tend to take advantage of migrants’ willingness to satisfy their demands (Gallardo, 2019; Segovia et al., 2018). Many migrant women do not report the abuses due to fear and lack of information regarding their rights (Gallardo, 2019; Sanhueza, 2017; Azócar, 2016). Moreover, it may be difficult for some women to recognize labour exploitation or precarious working conditions since they consider their situation in Chile to be better than it was in their home countries, even with the adversities (Sanhueza, 2017).

Further, another source of vulnerability is gender discrimination. The Chilean labour market favours the labour insertion of men, with a wide range of vacancies in sectors such as construction and mining (Campos et al., 2012). Moreover, besides gender pay gaps and under-representation in high-skilled jobs, sexism is also felt through

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Peru and 2% for Haiti (Asociación de Municipalidades de Chile [Chilean Municipalities' Association], 2019).

employers' concerns with women who have children or are in fertile age (Gallardo, 2019). Although this does not affect only female migrants, in their case sexism is coupled with race, class and nationality (Gallardo, 2019). For instance, according to Pinto et al. (2020), female migrants have more difficulties entering the labour market, have a twice higher probability than men to fall in underemployment, have a salary on average 19% lower than men, and face a 40% higher probability of being employed in informal work.

Nationality represents yet another source of discrimination (Campos et al., 2012; Gallardo, 2019; Segovia et al., 2018). While migrant women from developed countries have higher participation in job sectors of higher prestige (Campos et al., 2012), Afro-Colombians are associated with sex work, being concentrated in low-skilled, low-wage occupations (Segovia et al., 2018; Azócar, 2016). Peruvians are mostly seen as “nannies” and are concentrated in domestic service (Campos et al., 2012; Gallardo, 2019), while black women are associated with cleaning jobs (Gallardo, 2019). Alternatively, Gallardo (2019) points out a “positive discrimination” against Colombian and Venezuelan women, who are seen as more friendly than Chileans and therefore more suited to work in customer service. Hence, labour insertion of migrant women in Chile is mainly determined by nationality (Campos et al., 2012). In a study conducted with migrants who acquired permanent residence in 2018 (Asociación de Municipalidades de Chile [Chilean Municipalities' Association], 2019), while 1% of Argentinians declared to be employed in domestic service, this number rises to 34% for Peruvians. Moreover, while 26% of Chinese women were businesswomen, the rate for Haitians was 0% (Asociación de Municipalidades de Chile, 2019).

Discrimination based on nationality is also evidenced through the informality rates. While only 5.4% of European migrant women did not possess a job contract in 2012, this rate rises to 50.8% for Bolivians and 48% for Peruvians (Campos et al., 2012). For some migrant women, informality comes as an alternative to labour exploitation. They prefer to take informal jobs, mostly with the selling of goods, instead of having a job contract with precarious working conditions. On the other hand, without a contract, they risk seeing their products being confiscated, paying fines, not accessing their rights, and in the worst case being expelled from the country (Segovia et al., 2018). It is visible how the poor working conditions and the lack of proper labour migration policies only deepen female migrants' vulnerabilities and exclusion (Sanhueza, 2017), creating a “vicious circle of informal work-undocumentation-violation of rights” (Corporación Humanas, 2011, p. 10).

Another issue that brings disadvantages to migrant women is the difficulties in getting their qualifications recognized. According to MIPLEX (Solano & Huddleston, 2020), Chile receives grade zero on the process since there are no specific general procedures, only mutual agreements with certain countries - for the rest, the requests are analysed on an *ad hoc* basis. The excessive bureaucracy and the slow processes put women at yet another disadvantage in the labour market and are often associated with deskilling (Stefoni, 2011; Gallardo, 2019). Moreover, there are also no programmes on the national level to foster immigrants' participation in the labour market (such as bridging courses or employer incentives) or to address the labour market situation of migrant women (Solano & Huddleston, 2020). Lastly, only long-term residents have access to social security such as unemployment benefits, pension or social assistance (Solano & Huddleston, 2020).

Summing up, due to lack of options, immediate necessities, difficulty in validating their studies, and discrimination, migrant women end up concentrated in low qualification occupations, which in several cases are lower than their level of skills and study (Cid, 2017). All of these factors contribute to perpetuating the social exclusion of migrant women, by imposing barriers to their economic and social ascension (Gallardo, 2019).

Despite these poor conditions and similarly to Argentina and Brazil, Chile does not have specific public policies on labour migration (ILO, 2017). The migrant population has not been substantially accounted for in the formulation of public policies, evidencing a lack of preparation that can partially be explained by the exponential increase of the number of migrants in Chile in the past few decades<sup>9</sup> (Campos et al., 2012). The 1975 Law contributes to the heavy dependency of migrants on employers. Article 64, for example, states that individuals who choose to terminate job contracts may have their request denied (Law n. 1.094, 1975). Article 3 is another harsh directive, stating that “foreigners in an irregular situation who do not submit applications to regularize their condition within the period indicated in transitory article 1 must be fired from their job or occupation. [...] In addition, their expulsion from the national territory will be ordered” (Law n. 1.094, 1975, p. 27). It is crucial to understand the limitations of this law, which focuses primarily on regulating the migratory fluxes, dedicating almost no attention to labour or social insertion (Weller, 2006 as cited in Campos et al., 2012).

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<sup>9</sup> The percentage of migrants living in Chile has grown exponentially over the past few years, rising from 0.8% (105.070 migrants) in 1992 (INE, 2018) to 7.8% (1.492.522) in 2019 (INE, 2020).

On a positive note, the National Migration Policy<sup>10</sup> has as one of its principles the “respect to the labour rights of migrant workers”, regardless of the migratory status (President Michelle Bachelet, 2008). Moreover, the Policy has as one of its main axes a “gender transversal approach”, recognizing the fact that migrant women are more vulnerable than men and recognizing the need to protect their particular needs (President Michelle Bachelet, 2015). Another important measure was the creation of the temporary visa for work reasons in 2015. With this measure, it is possible to change employers without the need to ask for a new visa, as well as to request a permanent residence after only one year with the same employer (instead of the previously requested two years). Moreover, migrants are allowed to pursue other activities besides work (e.g. study or entrepreneurship) (ILO, 2016b). Those changes are extremely beneficial to migrant women since they mean a reduced dependency on the employer. Besides being free to change employers, they now have the possibility of studying or undertaking business, which can contribute to their autonomy and human capital.

Moreover, the new migration law foresees many improvements for migrant women concerning the labour market. First, the revalidation of university degrees will no longer be a monopoly of the Universidad de Chile (Henríquez & García, 2018), which should facilitate the process for migrant women and also reduce the deskilling phenomenon. Second, another right that is stressed is the right to decent working conditions. The law stresses that employers have to fulfil their obligations regardless of the migratory status of the individual. Lastly, it recognizes the possibility of admission into the country for individuals who are looking for a job (Law n. 21.325, 2021). For women, this represents an advantage because, without the need for a job contract, there is a reduction in the pressure to accept precarious working conditions.

As stated by Campos et al. (2012, p. 106), there is an “urgent need to integrate these elements into the configuration of a political institutionality that translates into the creation of efficient and effective institutions in their capacity to respond to the demands of this population.” And although Chile can be considered as having a non-sensitive approach to migrant women when it comes to its labour migration policies, these aforementioned initiatives, coupled with the new migration law, represent a great step in recognizing and

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<sup>10</sup> “In the case of Chile, immigration policy, or its guidelines, are not found in one law but in two instructions from President Bachelet, which makes it a government policy. These are presidential instructions 9/2008, which issues instructions on the National Immigration Policy, and 5/2015, on Guidelines and Instructions for the National Immigration Policy” (ILO, 2017).

responding to the vulnerabilities of women. Most importantly, the discussion of the new law opens space and represents a great opportunity to bring to the table the topic of gender inequality in migration (Lupica, 2017).

### 5.3 Asylum Policies

Similarly to Brazil, Chile witnessed a surge in refugee requests starting from 2016, where most came from Colombia (41%), Cuba (33%) and Venezuela (21%). While most of the requests came from men (58.5%), women figure as the majority of the recognized cases (52%) (Departamento de Extranjería y Migración [Department of Foreign Affairs and Migration], 2021).

In Chile, the handling and procedures of asylum requests are regulated by the Law n. 20.430 (2010), which follows the 1951 Geneva Convention on the definition of refugees - including those who fear persecution based on their “race, religion, nationality, belonging to a certain social group or political opinions” (Law n. 20.430, 2010). As previously stated, although the law does not include gender, many authors and organizations (Patrick, 2014; Freedman, 2010; UNHCR, 2002; European Council on Refugee and Exiles, 1997) argue that it can fall under “social group”.

Moreover, the refugee law’s regulation states that conditions of vulnerability, including gender, should be considered in the interpretation of the concept of refugee, through a sensitive approach (Decree n. 837, 2011). It is therefore noticeable how gender is present already in the first guidelines, and being so, the refugee law may already be deemed more gender-sensitive than the Law on Foreigners.

There are in total five mentions of gender-related terms (two of “gender”, two of “sex” and one for “sexual violence”). The first mention of sex comes in the non-discrimination article, so it is not exactly gender-specific. There is another mention of sex and one of gender appearing in article 30, which refers to the right of every asylum seeker to an individual separate interview, with the right to an interviewer and translator of the same sex (Law n. 20.430, 2010). The right is granted to all family members, not only to the sponsor, “in order to ensure they have the opportunity to present their case independently” (Law n. 20.430, 2010, p. 7). It also states that interviewers and translators should be properly trained to identify any circumstances (including gender) that may compromise one’s ability to plead their case (Law n. 20.430, 2010, p. 7). This article represents a crucial commitment to women’s rights and needs since it guarantees them a



process that is responsive to their vulnerabilities. Women are entitled to a safe environment that should facilitate the disclosure of sensitive information. The separate interview also gives them autonomy and an opportunity to tell their own story.

Moreover, article 41 states that individuals who were allegedly victims of sexual or gender violence (the last two mentions of “gender” and “sexual violence”) have the right to psychological and social assistance, as well as being assured of the confidentiality of the process. The law also foresees that refugees and asylum seekers have the rights to access health, education, work, housing, and administrative assistance relating to access to information about their rights, recognition of their qualifications, and so on. Moreover, the right to humanitarian assistance is guaranteed for the asylum seeker and his/her family, including housing, health and food aid, although the conditions for this assistance are not specified (Law n. 20.430, 2010).

Furthermore, are entitled to family reunification spouses “or the person with whom he or she is linked by reasons of coexistence”, as well as ascendants, descendants and minors under the applicant's guardianship (Law n. 20.430, 2010, p. 3). The law also foresees that social and cultural values from the applicant's home country will be taken into account in family reunification applications, which is a major win for families that do not abide by the Western concept of family ties. Additionally, the law does not impose periods of separation on the family, since according to article 32, the family members of the applicant are also issued a temporary residence visa, which allows them to work and access basic rights (Law n. 20.430, 2010).

The Chilean refugee law is quite vague when it comes to establishing the necessity of proof. Article 28 states that the applicant is responsible for presenting documentary proof or other kinds of proof to support their claim (Law n. 20.430, 2010). On the other hand, article 34 states that:

When sufficient material evidence cannot be collected, the Commission may base its recommendations on indications, presumptions and the general credibility of the applicant, in which case it will correspond to grant him the benefit of the doubt, provided that he has complied with the obligations set forth in the previous article (Law n. 20.430, 2010, p. 8).

At the same time, article 31 guarantees that during the process, background research on the home country of the applicant will be conducted, in order to collect information that may be relevant for the claim, such as political, social, cultural and civil

rights, as well as traditions or customs that may be harmful, and the consequences of not abiding by them, among others (Law n. 20.430, 2010). This may prove particularly beneficial to women who are fleeing from contexts of social repression and harmful cultural practices such as female genital mutilation.

In conclusion, a great share of the WFA Index's indicators (Emmenegger & Stigwall, 2019) is satisfied in the case of Chile, especially when it comes to procedures and reception. Regarding the former, caseworkers do receive training to deal with vulnerable groups, and asylum seekers have the right to legal advice, as well as female interviewers and interpreters. Regarding the latter, the right to health and housing assistance is prescribed for asylum seekers. On the other hand, this humanitarian assistance is provided in partnership with UNHCR and NGOs (UNHCR Chile, n.d.), and there are no specifications on the conditions of the housing schemes provided. More specifically, there are no indications if women get separate accommodations from men. Moreover, Chile fails when it comes to some application indicators since it does not explicitly recognize gender as a category in asylum eligibility; or private actors as persecutors (as well as state actors). Lastly, it does not recognize any form of gender-based persecution such as trafficking or sexual violence. Therefore, although Chile has shown great progress in terms of gender-responsiveness from the 1975 Law on Foreigners to the 2010 refugee law, there is still room for improvement, especially when it comes to detailing the procedures of protection of female asylum seekers or including gender-based persecution in its directives.

## 6. Discussion

After analysing the migration policies of Argentina, Brazil and Chile, many similarities emerge. First, it can be said that all three countries are in a transition process in what concerns migration (ILO, 2016a), having recently revised their migration laws and practices. None of them were prepared for the increase in migration fluxes over the last decade, or for the process of feminization of migration, which is reflected by regulations that lack considerations for gender and for the particular needs of women. An example of a gender-negative approach adopted by the three countries is the dependent status granted for women in family reunification schemes, which hampers their autonomy and contributes to the dependency on their male relatives. Moreover, while Argentina and Brazil miss opportunities of including gender perspectives in the regulation of health and education, for example, Chile falls even behind with a law that still dates from the 70s dictatorship and does not even foresee basic rights for migrants. Nonetheless, after the recent promulgation of the new Migration and Foreign Affairs Law (Law n. 21.325, 2021), Chile becomes the country with the most advanced migration law in terms of gender responsiveness.

While all three countries signed and ratified the Convention on the Elimination of All Forms of Discrimination against Women (UNGA, 1979), Argentina is the only country that is a signatory of the UN Global Compact for Migration (UNGA, 2018). While Chile never signed (Ministerio de Relaciones Exteriores [Ministry of Foreign Affairs], 2018), Brazil withdrew as soon as president Jair Bolsonaro took office in January 2019, alleging it was a threat to the country's sovereignty (Paris, 2019). Additionally, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (UNGA, 1990) was signed and ratified by Chile and Argentina but not Brazil.

Furthermore, when it comes to labour, all three countries miss a concrete labour migration policy (ILO, 2017), especially in what concerns female migration. At the same time, they all experience the increase in migrant women looking for labour market insertion (ILO, 2016a). Nevertheless, migrant women in Argentina, Brazil and Chile face similar issues: vulnerability, informality, discrimination, deskilling, and concentration in low-skill and low-paid occupations, such as domestic service or manufacturing. Differently from global tendencies, neither Argentina, Brazil, nor Chile has active labour policies to attract high-skilled migrants. However, similarly to evidence from countries such as Germany (Grigoleit-Richter, 2017) or Switzerland (Riaño & Baghdadi, 2007), the three countries present strong barriers for women accessing the high-skilled labour market. These barriers

(which often include sexism, xenophobia, difficulties in having their qualifications recognized, and high demand in low-skilled occupations) often force many women into deskilling, especially in Brazil and Chile - as it also happens in the United States, Canada, Spain and many other countries (Flippen & Parrado, 2015; Man, 2004; Creese & Wiebe, 2012; Webb, 2015; Garrido & Codó, 2017). Moreover, both Argentina and Chile witness the global care chain phenomenon that has taken place in many countries such as Spain (Rey et al., 2019), Italy (Näre, 2013) and Iceland (Napierała & Wojtyńska, 2017). Therefore, being a woman and migrating to Argentina, Brazil or Chile means that you will most likely work in a sector such as domestic service, care service or manufacturing. There is a fair chance you will have an informal job, and you might face labour exploitation.

Against this background of double discrimination and vulnerability, Henríquez & García (2018) call attention to the need of using affirmative actions, consisting of “measures or public policies that are temporarily established to suppress or correct de facto inequalities suffered by women and some minorities, ensuring the promotion and equal opportunities in all sectors of activity, occupations and at all levels of responsibility” (Staff, 2000, as cited in Henríquez & García, 2018, p. 9). The authors also emphasize that formulating policies that acknowledge their vulnerabilities and rights is not about treating women as victims.

Lastly, regarding asylum practices, it is interesting to notice that the five categories of persecution of the 1951 Convention mirror States’ priorities for public matters, contributing to the negligence of gender-based violence, which is often considered a private matter (Abreu, 2018). In order to become gender-sensitive, States should broaden their interpretation of persecution to include those perpetrated by non-State actors, especially in the cases where the State is incapable of protecting the victims (European Council on Refugee and Exiles, 1997; UNHCR, n.d.). When comparing asylum policies between the three countries, Argentina is the only one to specifically recognize gender-based persecution. Brazil falls behind in regard to recognizing the particular needs of refugee women since many rights such as psychological assistance or separate and independent interviews are not specified. Chile, on the other hand, stands out in their degree of gender-responsiveness of asylum policies, while Argentina follows the same path. Nonetheless, it is interesting that all three countries recognize the right to interviews with a same-gender interviewer.

Further details of the comparison can be found in the Appendix.

## 7. Conclusion

The feminization of migration is a phenomenon that can be observed worldwide, including in South America. Women nowadays are migrating just as much as men, mainly due to an increased demand for gendered work, such as domestic service or manufacturing. Moreover, women are migrating less as dependents on family reunification schemes and more as autonomous migrants who are searching for labour. In South America, the phenomenon was accompanied by an increase in migration fluxes, which the countries were not prepared for. This led to a period of revision of migration policies which, however, still did not have gender as one of the main drivers.

Argentina, Brazil and Chile have in force migration laws that were elaborated reflecting the focus on the homogeneous male migrant and basically do not even mention gender, even though women comprise half (or more than half) of all migrants arriving in those countries. After a thorough analysis of migration laws, it is clear that none of the countries has an explicit gender dimension in their legislation. Moreover, when it comes to labour migration, Argentina, Brazil and Chile lack migration policies that target migrant women, which ends up contributing to reinforcing gender roles instead of providing them opportunities. These women have a strong presence in the informal sector and are mostly concentrated in low-skill and low-paid jobs, mainly in “female sectors”. Additionally, in Brazil and Chile, a significant share of female migrant workers are forced into deskilling, due to discrimination and higher demand in low-qualification occupations. Lastly, although the asylum regulations tend to be more gender-sensitive than the migration regulations in the three countries, Argentina is the only one to mention gender-specific forms of persecution as an eligibility criterion. Furthermore, while all three recognize the right to a same-gender interviewer, Brazil falls behind since it does not explicitly guarantee the right to an autonomous application with psychological assistance and separate interview.

Taking all of this into account it is finally possible to answer the main question proposed by this investigation: Are women at a disadvantage during the immigration or asylum-seeking process in Brazil, Argentina or Chile, compared to their male counterparts? And the answer is yes. Although all three countries have progressed over the last decades, approving migration laws that guarantee basic rights to all migrants and taking measures to improve the labour conditions of migrants, women are still at a disadvantage regarding the regularization, labour insertion or asylum-seeking processes.

In order to guarantee that migrant women are being valued, that their rights (including health, education and decent work) are being guaranteed and that their labour capacities and qualifications are being recognized and used, it is crucial to adopt more gender-sensitive approaches. A constant reflection about gendered practices, coupled with solid efforts to guarantee migrant women a safe space to discuss vulnerabilities and needs, as well as active attention to their demands and complaints can be a starting point in the process of putting gender-responsive measures in practice and fighting for migrant women's equal access to opportunities and rights.

Some limitations of this thesis include the fact that due to time and space constraints, only the main policy areas of each country were analysed. For instance, in Chile, some directives were put in place in order to mitigate the lack of recognition of access to basic rights in the 1975 Law, including migrants' rights to health, education and housing (de las Heras, 2016). Moreover, the scope of this thesis included only the legislation, labour and asylum, while some other equally important spheres, such as migrant's integration in the host society, were left out. Therefore, it would be beneficial to conduct a deeper analysis of the three countries individually, in order to analyse further policies and further spheres of female migrants' lives. Lastly, in order to get a more complete picture of female migrants' reality in South America, it would be useful to extend the analysis to other countries besides Argentina, Brazil and Chile, as well as to perform studies with different methods such as interviews.

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## Appendix

### Comparison of Argentina, Brazil and Chile concerning gender in migration policies

		Argentina	Brazil	Chile
<b>Migration Legislation</b>	<b>Mentions of gender-related terms<sup>11</sup></b>	0	0	1 (but in a gender-negative article) in the 1975 law; 11 in the 2021 law
	<b>Right to family reunification</b>	Granted to permanent residents and asylum seekers	Granted to all migrants	Granted in the 1975 (although there is no definition of family) and in the 2021 laws
	<b>Right to autonomous residence for dependents</b>	After two years for Mercosur individuals and three years plus an extra eligibility criterion for extra-Mercosur individuals	Another accredited criterion (i.e. work) is required, but no minimum period	1975 law: after one (for those on temporary visas) or two years (for those on work visas), but no additional criterion 2021 law: after two years <sup>12</sup>
	<b>Access to basic rights</b>	All migrants regardless of the migration status	All migrants regardless of the migration status	Not guaranteed in the 1975 law, but included in the 2021 law
<b>Labour Migration</b>	<b>Right to work</b>	Granted to all migrant categories	Granted to all migrant categories	The 1975 law dictates the need for a contract in order to grant a work visa (with exceptions) 2021 law: all migrant categories (except transitory migrants)
	<b>Relevant labour issues for migrant women</b>	Informality; concentration on low-skill/low-income jobs	Deskilling; labour abuses; informality; concentration on low-skill/low-income jobs, discrimination	Dependency on the job contract, deskilling, discrimination, concentration on low-skill/low-income jobs, labour abuse, informality, bureaucracy in diploma recognition
	<b>Labour policies for migrant women</b>	Efforts to regulate domestic service; not targeted at migrant women specifically	Efforts to regulate migrant labour; not targeted at migrant women specifically	Efforts to improve the issues, especially with the 2021 law; but they do not target women specifically

<sup>11</sup> Excluded when used as demographic variables.

<sup>12</sup> The law states that the specific conditions will be in the law's regulation, which has not been published yet. Moreover, the law foresees the right to autonomous residence in the case of death of the sponsor, dissolution of the family bond or domestic violence.

(continued).

		<b>Argentina</b>	<b>Brazil</b>	<b>Chile</b>
<b>Asylum Policies</b>	<b>Mentions of gender-related terms<sup>13</sup></b>	3	0	4
	<b>Recognition of gender-based persecution</b>	Yes	Not specified	Not specified
	<b>Right to psychological assistance</b>	Yes	Not specified	Yes
	<b>Right to apply independently</b>	Yes	Not specified	Yes
	<b>Right to separate interview</b>	Not specified	Not specified	Yes
	<b>Right to interview with same-gender interviewer and interpreter</b>	Yes, however, the request must be backed up by grounded motives	Yes	Yes
	<b>Right to humanitarian assistance</b>	Yes, but conditions are not specified	Provided, but not prescribed in the law	Yes
	<b>Requirement of proof</b>	Flexible	The law states that “relevant evidence” should be provided together with facts supporting the claim	Flexible

Source: elaborated by the author.

<sup>13</sup> Excluded when used as demographic variables.