

Institution: University of Bristol		
Unit of Assessment: 18 - Law		
Title of case study: Changing the 2017 Migration Laws in Brazil and Ecuador, improving access to residence and rights for migrants		
Period when the underpinning research was undertaken: August 2013 to December 2017		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s): Diego Acosta	Role(s) (e.g. job title): Professor of European and Migration Law	Period(s) employed by submitting HEI: 01/08/2013 - present
Period when the claimed impact occurred: 1 st January 2014 to 13 th August 2020		
Is this case study continued from a case study submitted in 2014? N		

1. Summary of the impact

Professor Diego Acosta of the University of Bristol has produced a body of internationally recognised research on immigration law in South America. This work has decisively influenced the inclusion and content of key provisions in major new immigration laws adopted in Brazil and Ecuador in 2017. These laws change the way that both countries regulate irregular migration, family reunification and the legal status of South American nationals. This has impacted the lives of, at least, 128,617 South American nationals who obtained a residence permit in Ecuador between 2017 and 2019, and a further 22,851 who did so in Brazil in 2018.

2. Underpinning research

Immigration regulation is a crucial legal and political challenge in South America. Since January 2014, Acosta has published a body of internationally recognised research, whose **distinct contribution to the field of immigration law is to put flesh on the meaning of three emerging principles** that have been reiterated in various regional, non-binding declarations since 2000. These principles are: (1) Non-criminalisation of irregular migration (i.e. migration that occurs outside of laws, regulations, or international agreements); (2) The right to migrate as a fundamental right; and (3) The construction of a South American citizenship [3.1-3.6]. Acosta has received external funding from the European Research Council and ESRC [3.i and 3.ii], and he has further benefited from several invitations to present his ideas before Parliaments, Ministries and International Organisations. These have led to more than 40 visits to South America to work with policymakers, using key findings from his research.

Acosta's contribution to the first principle of the **non-criminalisation of irregular migration**, has been to understand regularisation as a procedural right. This means that the undocumented migrant, who is physically present in the country and apprehended, must be offered, prior to deportation, an opportunity to regularise their status. Acosta labelled this the right to attempt regularisation as a first option [3.1-3.4 and 3.6].

With reference to the second principle, **the right to migrate as a fundamental right**, Acosta's research highlighted the need to recognise a subjective individual right to family reunification, and the importance of enshrining clear conditions in the law to exercise such a right, in order to respect legal certainty [3.1, 3.3 and 3.6].

Finally, when it comes to the third principle of the **construction of a South American citizenship**, Acosta's work has emphasised the centrality of approximating the legal status of South American regional migrants to those of nationals [3.1, 3.3, 3.5 and 3.6]. In this regard, Acosta has argued in favour of correctly implementing regional agreements on free movement of people at the national level and of establishing clear legal categories with comprehensive rights under which regional migrants would fall in the respective national laws in each state [3.1, 3.3, 3.5 and 3.6].

Acosta has produced the key, internationally recognised monograph in the field of South American migration and citizenship law [3.1], and several peer-reviewed papers [3.2, 3.4 and 3.5] in which he has defended these ideas. He also wrote a consultancy report commissioned by the Brazilian Ministry of Labour and by the international organisation, the International Centre for Migration Policy Development (ICMPD) [3.3] and a legal opinion for Ecuador's Parliament [3.6].

3. References to the research

- 3.1 **D. Acosta**, *The National versus the Foreigner in South America. 200 Years of Migration and Citizenship Law* (Cambridge University Press, 2018), Online ISBN 9781108594110. A book review by Finn (2019) 42 *Ethnic and Racial Studies* 1374-76 stated "This is, and will continue to be, the book on the South American region's legal approach to migration and citizenship."
- 3.2 **D. Acosta** and L. F. Freier, 'Turning the immigration policy paradox up-side down? Populist liberalism and discursive gaps in South America', (2015) *International Migration Review* Vol. 49(3), pp. 659-697, DOI:10.1111/imre.12146.
- 3.3 **D. Acosta**, 'Estudo Comparativo das Legislações sobre a Imigração de Portugal, Espanha e Brasil' (*Comparative Analysis of the Migration Legislation in Portugal, Spain and Brazil*) in International Centre for Migration Policy Development (ICMPD) and Ministry of Labour and Employment Brazil, *Migração Brasil Europa* (Vienna, ICMPD, June 2014), pp. 39-106.
English version: https://www.icmpd.org/fileadmin/ICMPD-Website/ICMPD-Website_2011/ICMPD_General/News/ITINERIS/Brazil_-_Europe_Migration.pdf
- 3.4 **D. Acosta** and L. F. Freier, 'Discursos y Políticas de Inmigración en Sudamérica: ¿Hacia un Nuevo Paradigma o la Confirmación de una Retórica sin Contenido?', (2015) *REHMU. Revista Interdisciplinar de Mobilidade Humana* Vol. 23, pp. 171-189, ISSN 1980-8585. DOI: 10.1590/1980-85852503880004411
- 3.5 **D. Acosta**, 'Towards a South American Citizenship? The Development of a New Post-national form of Membership in the Region', (2015) *Columbia Journal of International Affairs* Vol. 68(2), pp. 213-221. <https://jia.sipa.columbia.edu/toward-a-south-american-citizenship-the-development-of-a-new-post-national-form-of-membership-in-the-region>
- 3.6 **D. Acosta** and J. Ramírez, 'El Proyecto de Ley Orgánica de Movilidad Humana de la República de Ecuador: Contribuciones para el Debate', 30 July 2015, 16 pp. [Available upon request]

Grant information

- 3.i **A. Geddes**, *Prospects for International Migration Governance* (MIGPROSP), European Research Council, 1 April 2014-31 March 2019, EUR2,127,927.00. Participation: buyout 10% first year, 20% years 2, 3, 4 and 5.
- 3.ii **D. Acosta**, *Impacting Migration Laws in South America*, ESRC Impact Acceleration Account Knowledge Exchange Fellowship, 1 June 2017-7 August 2018, GBP2,000.

4. Details of the impact

Immigration represents a crucial legal and political challenge in South America. The emigration of approximately 5 million Venezuelans since 2015, mostly to other countries in the region, has put the regulation of the legal status of non-nationals at the centre of political debate. In December 2019, there were 366,596 Venezuelans in Ecuador and 253,495 in Brazil.¹ Despite the increasing number of immigrants in both countries during the twenty-first century, national immigration laws remained outdated, as they had been adopted during periods of military regimes: in 1971 in Ecuador and in 1980 in Brazil. The three principles that Professor Acosta develops in his work ((1) Non-criminalisation of irregular migration; (2) The right to migrate as a fundamental right and; (3) The construction of a South American citizenship)) were completely absent in these previous legal frameworks.

Acosta's work has had two different types of impact and beneficiaries. First, his research decisively affected the introduction and content of a number of key provisions in the new immigration laws in 2017 in both countries. Parliamentarians in Ecuador and the Ministry of Justice's drafting Committee and the National Immigration Council in Brazil used his research and written advice to amend the wording of several provisions in the laws, as well as to justify the inclusion of others.

Second, the laws' implementation has had a positive impact on the lives of thousands of migrants in both countries who have obtained a residence permit and thus access to the right work, education, health care and family reunion, which depend on having a residence permit.

The following two sections further describe the impact of Acosta's research and its beneficiaries

¹ Information available here for Ecuador: <https://r4v.info/es/situations/platform/location/7512> (accessed 25 March 2020). For Brazil please see: <https://r4v.info/es/situations/platform/location/7509>

by dividing the presentation between Ecuador and Brazil.

Ecuador

In Ecuador, **Acosta's work decisively influenced the incorporation of a whole chapter (Chapter IV, Arts. 83-89) on South American citizenship** in the final version of its 2017 Law on Human Mobility (6 February 2017), which repeals the previous 1971 law that had been adopted during dictatorship. In turn, **at least 128,617 South American nationals** – the majority of them Venezuelans – obtained a residence permit in the country between 2017 and 2019 [5.9] under Chapter IV of the law.

In July 2015, Acosta produced, together with Ramírez (an Ecuadorian sociology scholar), a 16-page written submission for the Ecuadorian Parliament [3.6]. Several legal suggestions were put forward, in particular on a South American citizenship. The report was presented in front of the International Relations Committee – which was in charge of drafting the new migration law – by Ramírez on several occasions in 2015 and 2016, as well as before the Plenary in 2016 [5.6-5.8]. Acosta visited Ecuador's Parliament in December 2015, attended the Committee's sessions and met with several MPs and advisors to discuss the draft bill [5.6].

As confirmed by the President of Parliament at the time of the adoption of the law, *"the report, contribution and commentaries of Professors Acosta and Ramírez decisively influenced the inclusion of Chapter IV (Articles 83-89) on South American citizenship in the final text of the law adopted"* [5.6]. This has also been confirmed by the former President and Vice-President of the Parliament's International Relations Committee [5.6]. As the then Vice-President of the International Relations Committee corroborates, *"one of the main points of their report was the need to more clearly regulate the legal status of nationals coming from countries in the region, something that was not included in the original proposal for the law"* [5.6]. The main impacts, which draw upon key findings from Acosta's research [3.1-3.6] can be summarised as follows:

(1) *Non-criminalisation of irregular migration*: the Acosta-Ramírez Report emphasised the *"importance of incorporating a permanent mechanism of regularisation for nationals coming from UNASUR Member states"*, a regional organisation that, at the time, included all 12 countries in South America [5.6]. Article 85 of the 2017 law was directly affected by this proposal and *"establishes a mechanism to access temporary residence, and regularisation when needed, that nationals of UNASUR member states must follow"* [5.6].

(2) *The right to migrate as a fundamental right*: Acosta-Ramírez's report also highlighted *"the need to include family reunification in a concise manner for South American nationals"* [5.6]. This was enshrined in Article 87 of the law which *"establishes the rights of family members of South American citizens"* [5.6].

(3) *The construction of a South American citizenship*: Finally, the report also urges *"the necessity to include in the Draft Bill the rights of entry, exit, circulation, residence and work for South American citizens"* [5.6]. As the former President of Parliament confirms, *"Article 84 of the law finally adopted includes the right of entry, exit and circulation for the nationals of UNASUR member states"* [ibid].

In brief, *"it can be proved how each one of these articles follow the suggestions that Professors Acosta and Ramírez had made, and that such suggestions played a decisive and central role in the final text of the law"* [ibid].

Following the publication of Acosta's landmark book on South American migration and citizenship [3.1] in 2018, the new President of the International Relations Committee invited Acosta to present his vision on how to reform and improve certain aspects of the 2017 migration law, coinciding with the increasing immigration to Ecuador of Venezuelan nationals [5.6 and 5.7]. Before the presentation on 10 January 2019 [5.6], Acosta sent a 10-page document with legal suggestions, which was taken into consideration by the President and her team, as well as circulated to all MP members of the Committee and to government officials [5.6]. Acosta, who was the only non-Ecuadorian academic to be invited to present, devoted his presentation to the need of enhancing permanent regularisation mechanisms. In fact, despite the approval of the 2017 migration law, and the 128,617 South American nationals who obtained a residence permit under its Chapter IV, there were still thousands of Venezuelan nationals who could not fulfil certain conditions and remained in an irregular situation. During his visit in January 2019, Acosta discussed this issue with different officials at the Ministry of Foreign Affairs and, later, with the Vice-Minister of Human Mobility in May 2019 in Quito, within the framework of an academic

Impact case study (REF3)

conference to which he was invited by an Ecuadorian University. This discussion with the Vice-Minister continued in July 2019 within the framework of an event organised by the international organisation ICMPD. On 25 July 2019, Ecuador adopted a regularisation procedure for Venezuelan nationals that lasted until 13 August 2020 [5.10]. This partly addressed the concerns expressed by Acosta, and the plight of those previously unable to obtain a residence permit. As of 14 August 2020, this had benefited 38,243 Venezuelan nationals [5.9].

Brazil

In Brazil, Acosta's research decisively influenced the final drafting of several provisions of its 2017 Lei no. 13.445, which repealed the 1980 Migration Law adopted under a previous dictatorship. In turn, these provisions have led to the granting of residence permits to thousands of South American nationals (22,851 in 2018 alone) [5.5].

The origin of the new migration legislation was as follows. In 2013, the Brazilian Ministry of Justice created an expert Committee, composed only of Brazilian nationals, to draft what would become Lei no 13.455. The Committee met seven times between July 2013 and May 2014 [5.3]. A report by Acosta, commissioned by Brazil's Ministry of Labour and the International Centre for Migration Policy Development (ICMPD) had a major impact on the work of the Committee, as detailed below. The Report, published in June 2014, analysed the 1980 Brazilian Immigration law, as well as a 2009 Brazilian government proposal for reform, and compared it with the immigration laws in Spain and Portugal. Based on this analysis, it suggested key elements that should be part of any new legal framework (3.3).

Acosta's report consists of six sections, three of which were written in August and September 2013, ahead of a presentation explaining some key findings that he gave in Brasilia in front of top Ministry of Labour officials on 13 September. He used feedback from that event to finalise an initial draft of his Report, which he sent to the Committee in charge of preparing the new migration law on 16 October 2013. The Report was read by all the Committee members: it constituted one of the core references they used [5.4]. Further, in May 2014, Acosta, drawing on (3.3), produced a 10-page legal commentary that was sent to the Committee between the publication of the first draft of the Committee's proposal in April 2014, and the final draft bill published in July 2014 [5.4]. The Committee acknowledged this contribution in its final draft [5.3]. Brazil's National Immigration Council also drafted a parallel proposal and published it in December 2014. The National Immigration Council had also received Acosta's legal commentary in May 2014. Acosta then visited Brasilia again in July 2015 and met with several Senator advisors and top public officials in Brazil's Ministries of Labour, Foreign Affairs and Justice where he continued presenting his arguments and influencing the debate. Following debate by Congress and Senate, the final bill 13.445 was adopted and published on 24 May 2017.

As confirmed by the corroborating statement of the Secretary of State for Justice at that time, who also chaired the Committee in charge of drafting the law, *"both the report as well as the written contribution were very important and used extensively in the debates of the Committee. Some of the Professor's suggestions in his documents decisively influenced articles adopted in the final proposal"* [5.2]. Another corroborating statement by the then President of Brazil's National Immigration Council adds that Acosta's work *"has enormously contributed to the discussions on the new law and to the drafting of some of its articles"* [5.1]. In particular, Acosta's instantiation of the three key principles noted above were taken on board by the Committee and by the National Immigration Council:

(1) Non-criminalisation of irregular migration: First, **Acosta's work "played a fundamental role" in the introduction of a permanent mechanism of regularization for undocumented migrants.** The former Secretary of State for Justice explains, *"this is very clear from the difference between the first version (of the Committee's report) of 28 April 2014, which did not include such mechanism, and the second version of 31 July 2014 which clearly introduces in Article 34(1) the obligation of the migration authorities to offer the migrant a period to have an opportunity to regularise his situation"* [5.2]. He further confirms that this had been the first point of Acosta's legal commentary, as well as the first section of his chapter in the 2014 Report [3.3]. Acosta's work was also "essential" to the inclusion of a similar provision in Art. 55 (III) of the National Immigration Council's proposal [5.1]. The mechanism was finally enshrined in the renumbered Article 50 of the 2017 migration law and is very similar to the mechanism in place in Argentina, *"which the Professor specifically mentioned in his contribution as a good practice"* [5.2].

Impact case study (REF3)

(2) *The right to migrate as a fundamental right: Acosta's suggestions "influenced in a direct manner" the introduction of a subjective right to family reunification for migrants in Brazil* in both the Committee and the National Immigration Council draft bills [5.1 and 5.2]. As the former Secretary of State for Justice mentions: "Article 26 of the final version included the suggestion by the Professor (in his legal commentary) in the sense of clarifying the migrant's right to family reunification. This can be seen in the addition to Article 26.2 of the words 'or of the migrant who is a beneficiary of a residence permit' as the Professor had suggested", which was missing in the first draft of the bill from April 2014 [5.2]. This same wording was also inserted into Art. 37 of the 2017 law finally adopted.

(3) *The construction of a South American citizenship: Acosta's work was central in incorporating a reference to the MERCOSUR Residence Agreement.* This agreement, adopted by the regional organisation Common Market of the South (MERCOSUR) offers South American nationals from nine countries, excluding Venezuela, a right of residence, as well as other entitlements, in each other's territory. The former Secretary of State for Justice explains: "This reference was absent in the first version and the Professor insisted on its importance (in his legal commentary) and the need to incorporate it and how this could be done in Art. 145" [5.2]. The provision was finally included in Article 110 of the Committee's final proposal, which substituted Art. 145. This provision then became Article 111 in the 2017 law finally adopted and kept the reference to MERCOSUR. There were 22,851 residence permits granted under the MERCOSUR agreement in Brazil in 2018 [5.5]. In 2018, Brazil permanently extended the validity of the agreement to include Venezuelans as well. By October 2020, 148,782 Venezuelans had obtained a residence permit through this route [5.5].

5. Sources to corroborate the impact

- 5.1 National Immigration Council Brazil, Ministry of Labour and Employment (2015). Corroborating Statement – President.
- 5.2 Ministry of Justice Brazil (2015). Corroborating Statement – Secretary of State for Justice (*Secretário da Justiça*).
- 5.3 Ministry of Justice Brazil, Committee of Experts, (2014), Final Draft Bill on Migration and Promotion of the Rights of Migrants in Brazil (Anteprojeto de Lei de Migrações e promoção dos direitos dos Migrantes no Brasil), Brasília 31 July 2014.
- 5.4 Ministry of Justice Brazil, Committee of Experts, (2014), emails 5 May 2014 and 26 May 2014.
- 5.5 Official Data Brazil: Observatório das Migrações Internacionais; Ministério da Justiça e Segurança Pública/ Conselho Nacional de migração e Coordenação Geral de Imigração Laboral, Brasília, DF: OBMigra, 2019, p. 81; and Coordination platform for refugees and migrants from Venezuela, Situation report Brazil, October 2020, published on 15 December 2020.
- 5.6 Ecuador's Parliament (2017-19). Corroborating Statements by three MPs: President of Ecuador's Parliament (2018); President International Relations Committee (2019); and Vice-President International Relations Committee (2017).
- 5.7 Ecuador's Parliament documents (2019 and 2016). Letter of Invitation to address Ecuador's Parliament's International Relations Committee, 9 January 2019. The presentation is available here: https://www.youtube.com/watch?time_continue=2&v=8XxD5todKtQ&feature=emb_title [video file also available upon request]
Certificate confirming the presentation of Acosta-Ramírez's commentary in front of Ecuador's Parliament in 2015-16, Quito 17 November 2016.
- 5.8 Ecuador's Parliament, (2016), Final Draft of the law sent to the Plenary by the Ecuador's Parliament Specialised Permanent Committee on International Relations, Quito 14 November 2016.
- 5.9 Official Data Ecuador: Ministry of Foreign Affairs Ecuador, Regularización de ciudadanos venezolanos en el Ecuador, 14 August 2020.
- 5.10 Ecuador, Decreto Ejecutivo 826, Quito, 25 July 2019 and Decreto Ejecutivo 1020, Quito, 23 March 2020, prorogating Decreto Ejecutivo 826.