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EXPERT COMMENTARY
South American Nationalities
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South American Nationalities



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South America consists of 12 states which belong to the Very High Quality tier (Chile (35th), Brazil (37th), Argentina (38th), Uruguay (43rd) and Paraguay (48th), High Quality tier (Peru (51st), Venezuela (61st), Colombia (62nd), Ecuador (73rd) and Bolivia (81st)) and Medium Quality tier (Suriname (93rd) and Guyana (98th)) tiers of the QNI. Their situation has remained fairly stable since 2015, although Colombia and Peru have both seen a great improvement in their general ranking position, from 81 to 62, and from 61 to 51 respectively. This is largely explained by their recent acquisition of visa-free travel to the Schengen Area.



Migration and mobility have been the object of legislative and political attention since the independence of the former colonies from Spain and Portugal in the early 19th century. From the very early stages, the new States signed bilateral and multilateral agreements facilitating free movement and equal treatment of regional nationals. Several of these countries also enshrined constitutional provisions which included principles such as open borders, access to equal rights for foreigners in general, and preferential treatment to naturalize for Hispano American nationals. The 20th century, however, can be largely considered as one where increasingly restrictive choices to regulate immigration became the norm. These restrictions affected particular groups of individuals more – due to exclusions on grounds of race, ethnicity or political ideology – than Latin-Americans as such. With the generalized presence of military regimes in most South American republics in the 1970s, and within a framework of deep suspicion of foreigners, discussions on mobility and open borders almost completely stalled.

Since the turn of the century, proposals on the free movement of people at the regional level have flourished in various fora: the Andean Community (CAN), MERCOSUR and the Union of South American

Nations (UNASUR). Out of the three, only UNASUR – arguably the least developed regional process – includes all 12 countries in South America. CAN – formed by Bolivia, Colombia, Ecuador and Peru – and MERCOSUR – Argentina, Brazil, Bolivia (still going through the process of joining), Paraguay, Uruguay and Venezuela (whose membership is currently suspended) are more limited in their membership. The remaining six countries in South America are, however, MERCOSUR Associate States which means that they can also implement its legislation at domestic level. This is the case for the MERCOSUR Residence Agreement, the most important mobility treaty in the region, which will be analyzed below.

At a discursive level, the South American Conference on Migration has dealt with regional mobility since 2001 when it started discussing free movement of people as part of a new international reality including regional integration and globalization. Finally, the Pacific Alliance, the most recent organization to have appeared on the scene in 2012, numbers among its members not only Colombia, Chile and Peru, but also an extra-regional country, Mexico. Among its successes is the abolition of visas for short-stay travel between its countries, as well as an incipient discussion on the free movement of workers.



Current Legislation on Free Movement and Equal Treatment

Two aspects must be distinguished within this regional framework: free movement for short stays under 90 days, usually associated with tourism or business purposes, and free movement in order to reside and/or work.

With reference to the Andean Community, Andean nationals can move without passports, by simply presenting their national identity cards. They may remain in another Member State's territory for a period of up to 90 days, renewable for another 90. Andean nationals also enjoy a common passport and consular protection abroad from the authorities of any Member State when unrepresented by their own country in the state they find themselves. They also enjoy non-discrimination due to nationality in access to the labor market as well as equal access to social security.

There are also agreements on travel documents at the MERCOSUR level. However, the most important legislation is the 2002 MERCOSUR Residence Agreement. Implemented in 2009, the Agreement's main objective is to deal with intra-regional migrants and it has transformed the migration regime for South Americans. It provides that any national of a MERCOSUR or Associate Member State may reside and work for a period of two years in a host state with the only requirements being the absence of a criminal record and proof of nationality. Naturalized citizens in one of the Member States need to wait five years before they can move. After two years, the temporary residence permit may be transformed into a permanent one if the person proves legitimate means of providing for him- or herself and any family members. It also lays down a number of rights, including the right to work and

equal treatment in working conditions, family reunion or access to education for children. All the countries in South America (i.e. not just MERCOSUR countries) have ratified the agreement and apply it, with the exception of Venezuela, Suriname and Guyana.

Domestic Developments on mobility and migration in 2016

Whereas the regional discussion on free movement and the eventual adoption of a South American citizenship slightly slowed in 2016, several domestic developments are notable, out of which we will highlight two. First, Brazil and Ecuador adopted more progressive migration laws in the first half of 2017. Second, and contrary to this trend, the Macri government in Argentina adopted an Executive Decree in January 2017 restricting certain provisions of its 2004 migration law in what represents a very important step back for the region.

The new laws in Brazil and Ecuador are noteworthy in that they represent progressive texts when compared to the present framework, and an advancement in the rights of migrants at a point in time when restrictive choices seem to be prevalent globally. They were also adopted by a large majority of votes – more than 70% in the Brazilian case and by unanimity of those present in Parliament in Ecuador. They replace restrictive laws adopted in 1980 and 1971, respectively and their adoption has been the result of years of proposals and negotiations. Both also incorporate a number of interesting developments regarding entry, residence and access to citizenship for regional citizens and others. In the Brazilian case, despite the vetoing of some provisions by President Temer, the new law recognises the privileged position of South American nationals covered under the MERCOSUR Residence Agreement and the need to continue strengthening the economic, political, social and cultural integration through the construction of spaces of common citizenship and free movement of people (Arts. 3 and 111). In turn, in Ecuador the new law incorporates a full new chapter (Chapter IV) on South American citizens strengthening their right to reside in the country and extending it for the first time to the Guyanese and Surinamese.

The coming period seems an exciting one with regards to the development of regional mobility and migration. 2017 will see discussions in both Chile and Paraguay to adopt new migration laws replacing their obsolete – as recognised by all the actors involved – frameworks. As the Quality of Nationality Index clearly depicts, having a South American nationality is now more relevant and valuable thanks to the opportunities it brings for mobility among an increasingly larger number of countries. Chilean citizens have the best passport (35th), closely followed by Brazil (37th), Argentina (38th), Uruguay (43rd) and Paraguay (48th). The situation of all countries could further improve in the future if regional mobility is deepened and expanded. For example, once the Human Mobility law in Ecuador enters into force, citizens from Guyana and Suriname will obtain a right to reside in the country. Both countries could also implement the MERCOSUR Residence Agreement to further facilitate mobility in the region. Other factors related to peace and economic development will also be central. The biggest progress in the general ranking in the period 2011–2016 has been achieved by Colombia (from 107th to 62nd). The opening of further economic opportunities which the peace process in this country could bring has the potential to further improve its position in the future.

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