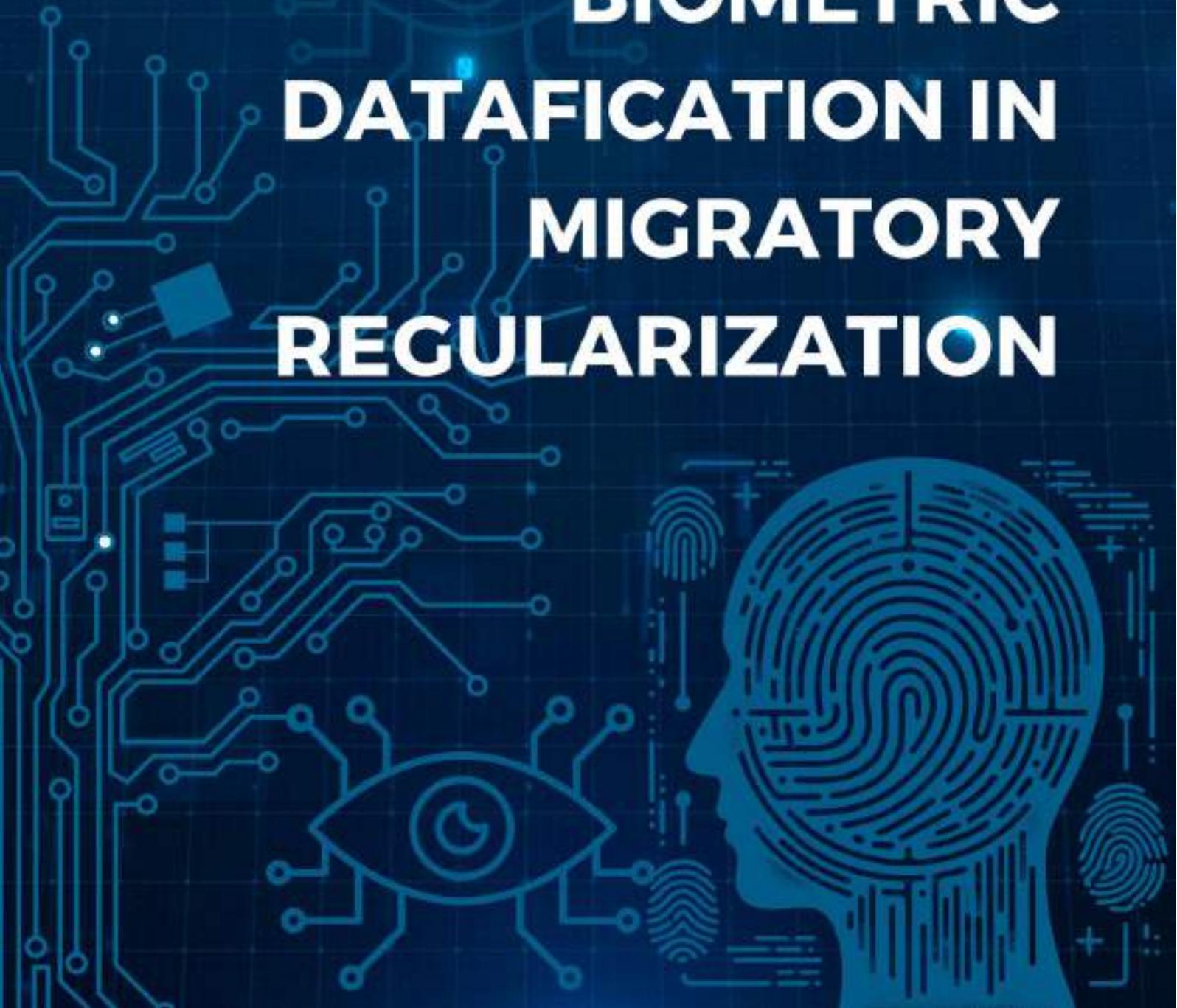


FACES AND RIGHTS:

AN ANALYSIS OF BIOMETRIC DATAFICATION IN MIGRATORY REGULARIZATION



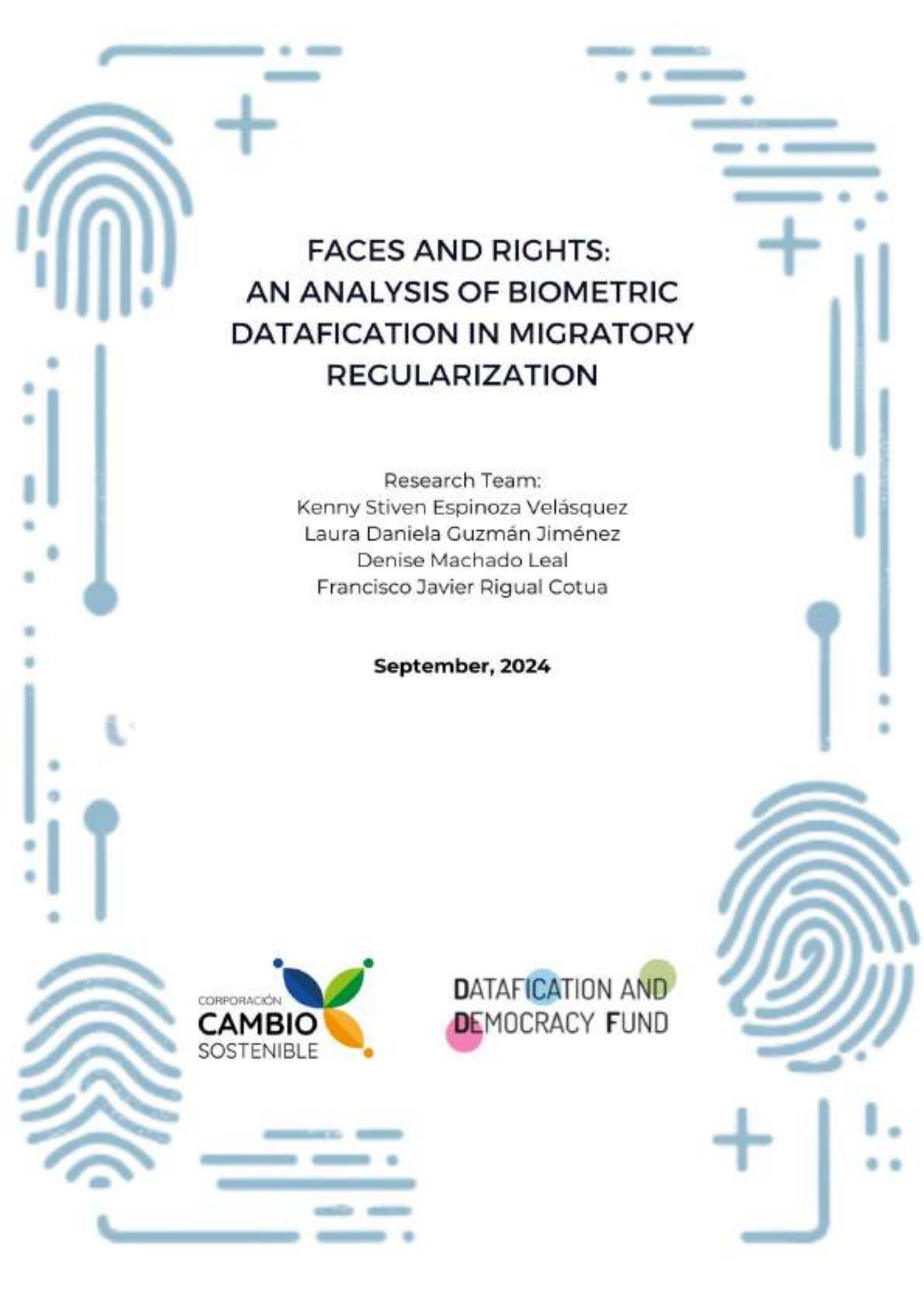
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**DATAFICATION AND
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CORPORACIÓN CAMBIO SOSTENIBLE

It is a nonprofit entity with administrative autonomy, whose purpose is to promote sustainable development for social equity. We envision a future in Latin America where every individual, community, and ecosystem flourishes in harmony. We strive to be the driving force behind bold and lasting change—transcending borders and confronting inequalities, injustices, and conventional boundaries.

Through research, technology, and public policy advocacy, the organization addresses equity-related challenges in key areas such as the protection of human rights online, gender equity, and environmental sustainability.ç

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Faces and Rights: An Analysis of Biometric Datafication in Migratory Regularization

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ABSTRACT

This research examines biometric datafication in the context of migrant regularization in Colombia under the Temporary Protection Statute for Venezuelan Migrants. Using a multidimensional mixed-methods approach, both quantitative and qualitative data were collected through surveys and interviews with Venezuelan migrants and key human rights stakeholders. Findings highlight shortcomings in informed consent, risks of mass surveillance, and discrimination in biometric data collection. The study concludes that public policy demands ethical restructuring to ensure fundamental rights protection and greater transparency.

Keywords: Biometrics, Human Rights, Global South, Datafication, Democracy

RESUMEN

Esta investigación analiza la datificación biométrica en el contexto de la regularización migratoria en Colombia bajo el Estatuto Temporal de Protección a Migrantes Venezolanos. Utilizando un enfoque mixto multidimensional, se recopilieron datos cuantitativos y cualitativos mediante encuestas y entrevistas a migrantes venezolanos y actores clave en derechos humanos. Los resultados destacan deficiencias en el consentimiento informado, riesgos de vigilancia masiva, y discriminación en la recolección de datos biométricos. El estudio concluye que la política pública requiere una reestructuración ética que garantice la protección de derechos fundamentales y una mayor transparencia.

Palabras clave: Biometría, Derechos Humanos, Sur global, Datificación, Democracia

INTRODUCTION

The rise of datafication in society has radically accelerated the methods by which personal data is collected, processed, and used, significantly impacting human rights (Ortiz Freuler, 2022). This process entails the mass conversion of everyday life information into data that can be monitored, stored, and analyzed by governments and corporations (Couldry & Mejias, 2018). In the global era, this trend has created a new power dynamic where access to and control over information are essential for influencing political and economic decisions (Lavazza & Farina, 2023). The collection of vast amounts of personal data raises challenges concerning privacy, individual autonomy, and the protection of fundamental rights (Hildebrandt, 2019). The International Telecommunication Union's Global Convention on the Knowledge Society underscores the need to balance equitable access to knowledge with the ethical responsibility of handling information in a fair and rights-respecting manner (ITU, 2004). In this context, questions arise about how personal data, representing intimate dimensions of human life, is used for purposes beyond individuals' control, especially in an era where digital rights are still in the process of consolidation (Dijck, 2014).

Technologies like biometrics—including facial recognition, fingerprinting, and iris scanning—are viewed as efficient solutions for managing identification and tracking individuals (Ajana, 2013). In India, the Aadhaar¹ system represents the largest biometric identification program in the world, initially designed to improve efficiency in distributing social services but which, over time, has raised serious concerns about privacy and data security. Meanwhile, in the European Union, the General Data Protection Regulation

¹ Aadhaar is India's biometric identification program, meaning "support" or "foundations" (Belorgey, 2024)

(GDPR)² imposes strict limits on the collection and use of biometric data, promoting a robust consent model and strong protection measures.

The datafication in migration processes has profoundly changed the dynamics of border control and migrant management, particularly in a global context marked by migration crises affecting millions of displaced people (Scheel, 2019). While migration datafication has been presented as a solution to identity verification gaps, there remains a lack of clarity from a rights perspective about the role of biometrics in migration controls (Thomas, 2005). Today, more and more countries are adopting migration datafication, placing additional pressures on over 272 million international migrants and raising concerns about the safety of migrant minors (International Organization for Migration (IOM), 2020). Although this technological approach is efficient, it has been criticized for prioritizing security over human rights, exacerbating the vulnerability of migrants in forced displacement situations (van der Ploeg & Sprenkels, 2011).

In Latin America and the Caribbean, the adoption of biometric technologies has grown considerably over the last decade, driven by regional agreements and strategies to strengthen electoral transparency, financial cybersecurity, and border security (Santi Pereyra, 2018). In most cases, the implementation of biometric systems in Latin America is presented as a solution, either fully or partially, to a range of longstanding regional issues: citizen security, the proper distribution of welfare benefits, and legal recognition of individuals before the state in countries with long histories of identification system problems (Díaz, 2018). As these technologies expand, significant risks concerning privacy and the misuse of personal data also increase, especially in countries where data protection is insufficient or nonexistent (Pugliese, 2010). Concerns about algorithmic discrimination and state power

² The GDPR was enacted under REGULATION 2016/679 OF THE EUROPEAN PARLIAMENT AND THE COUNCIL (EUROPEAN UNION, 2016)

abuse are common, particularly in regimes that use biometrics to control vulnerable populations (Perry & Lyon, 2011).

Colombia is the main host country for Venezuelan migrants (IOM, 2024). Of the more than 7.7 million Venezuelan migrants living abroad, over 37% are in Colombia (Espitia, 2024). Colombian government leaders have been willing to increase migration control over the migrant population, which has seen a disproportionate rise in undocumented foreign nationals entering the country since 2017³(Colombian Ministry of Foreign Affairs, 2017). By the end of 2018, a census was conducted for Venezuelan migrants without passports who expressed the need for a free document to work, under a mechanism called Administrative Registry of Venezuelan Migrants (RAMV)⁴. The issuance of such documents continued until 2020, with renewals granted for two-year periods in response to the vulnerability of the migrant population and the expectation that, once the emergency subsided, migrants would meet the requirements to enter the regular visa system (Colombian Ministry of Justice, 2022).

Colombia has traditionally been considered an exporter of citizens due to its long-standing internal conflict⁵, which led to more than five million internally displaced people (Unit for Victims, 2024). The period of violence caused the country to generate an international perception of insecurity for foreign migration, while also leaving Colombia behind in terms of migration policies and refugee management (Dejusticia, 2020). It wasn't until 2021 that the country created a Comprehensive Migration Policy⁶, and after years of

³ Resolution 5797 of 2017 by Colombia's Ministry of Foreign Affairs introduced the first alternative identification document for Venezuelan migrants intending to reside in Colombia, the Special Stay Permit (PEP in Spanish).

⁴ The RAMV in Colombia was conducted by the National Unit for Disaster Risk Management, an entity delegated at the time due to its role in risk and incident management. This task was carried out in collaboration with rights protection entities, such as the Ombudsman's Office and local authorities, among others (Decree 542, 2018).

⁵ The conflict mentioned ended with the 2016 peace agreement in Colombia between the Colombian government and the Revolutionary Armed Forces of Colombia (FARC), which shifted international perceptions of the country's insecurity (Lafuente, 2016; UN Verification Mission, 2023).

⁶ The Comprehensive Migration Policy is the first public policy that organizes the previously scattered migration regulations in the country, providing guidelines on return migration, refuge, statelessness, and more (Law 2136 of 2021).

attempts to overcome personal identification gaps for Venezuelan migrants wishing to settle in Colombia⁷, the Temporary Protection Statute for Venezuelan Migrants (EPTV) was introduced. Along with this statute came a new document, the Temporary Protection Permit (PPT for its initials in Spanish), valid for ten years and allowing time to accumulate toward residency⁸ once certain conditions are met (Decree 216, 2021).

The PPT was created under President Iván Duque's administration through Decree 216 of 2021, issued by the Colombian Ministry of Foreign Affairs. It was framed as a more secure, long-term document for Venezuelan migrants, granted to those who completed a migration and biometric datafication process (Colombian Ministry of Foreign Affairs, 2021). The process consisted of three stages: 1) an exhaustive online socioeconomic characterization survey, 2) an in-person appointment to collect biometric data such as iris scans, facial recognition, and fingerprints, and 3) the subsequent physical delivery of the document (Colombian Ministry of Justice, 2023). According to the latest report from Colombia Migration, over 1,932,667 PPTs have been issued, with 349,580 pending collection, and 462,048 migrants still in irregular status, mainly because they did not meet the deadlines set by the regulation to apply for the PPT (2024). The PPT is the only temporary document that has required biometric data, unlike previous documents (Thannus Serrano, 2022). This requirement raises alarms for Colombia and the Latin America and Caribbean region, as decisions to enforce biometric datafication on a vulnerable population could contradict the human rights framework.

Biometric datafication in the process of migration regularization is not an isolated phenomenon in Colombia; it is a growing global practice, presenting governments with the

⁷ Its precursors include the Special Stay Permit (PEP) in 2017, the Administrative Registry of Venezuelan Migrants (RAMV) in 2018, and the Special Stay Permit for Promoting Formalization (PEPFF) in 2020 (Las Heras, 2024).

⁸ A residency visa is granted to foreigners seeking permanent settlement in Colombia (Colombian Ministry of Foreign Affairs, 2022).

challenge of balancing national security and the protection of fundamental rights. In Colombia, the implementation of the Temporary Protection Statute for Venezuelans includes the collection of biometric data as a measure to regularize migrants and facilitate their access to services. However, this has sparked debates about privacy protection and the risks of mass surveillance in a country where data protection regulation is rigorous, yet its implementation and oversight face critical challenges.

This research aims to analyze the impact of datafication, particularly the mandatory collection of biometric data under the Temporary Protection Statute for Venezuelan Migrants in Colombia, in relation to democratic principles, individual rights, and equity. The goal is to propose recommendations and advocacy strategies that safeguard privacy and ensure equal participation in the migration regularization process. This article is divided into sections: Introduction, Methodology, Presentation and Discussion of Results (which includes a multidimensional analysis comparing contexts to understand the democratic implications of these policies in Colombia), Legal Analysis, Conclusions, and References.

METHODOLOGY

This research follows the adaptation of Arias González's Online Research Methods (2020), gathering primary qualitative and quantitative data through digital data collection techniques and instruments. Surveys were conducted with the Venezuelan population across the country, featuring segmented questions, including their perceptions of the biometric data request process, and semi-structured online interviews with key actors in Colombia and Latin America's technology and human rights ecosystem.

Interviews were conducted with 20 key stakeholders, and 31 surveys were administered to Venezuelan migrants between May and July 2024, employing a gender-focused, multi-stakeholder approach. Data collection was done through digital platforms, adhering to ethical principles of informed consent and confidentiality. The information was

processed using a mixed multidimensional approach, enabling an integrated analysis of qualitative and quantitative results (Fetters, Curry, & Creswell, 2013; Tashakkori, Teddlie, & Johnson, 2015). The results section presents findings from the surveys and interviews, addressing components such as biometric data collection, risks of biometric datafication, identification and related rights, data minimization and limitation, securitization, democratic participation, and public policy.

From an analytical perspective, the research integrates qualitative and quantitative data (Plano-Clark, 2019). The primary theoretical framework applied is Mixed Methods, specifically the theory of methodological complementarity proposed by Tashakkori, Teddlie, & Johnson (2015), allowing for a multidimensional analysis of the phenomenon.

The theoretical framework also incorporates the theory of human rights in the digital environment (Dupin & Borglin, 2020), facilitating the exploration of the legal and ethical implications of biometric technologies in migration regularization processes. Lastly, a legal and public policy analysis was conducted, focusing on biometric datafication in the Colombian context and the Temporary Protection Statute for Venezuelan Migrants.

RESULTS

The results are divided into two sections. The first section presents data from the survey conducted with Venezuelan migrants across Colombia, and the second includes interviews with key actors in the human rights and technology ecosystem in Latin America.

Section 1. Quantitative Survey:

This section details the participation of the Venezuelan community that received the PPT and currently resides in Colombia. Using the FACES and RIGHTS survey tool, several key findings were identified:

a) Demographics.

The survey included 31 participants, 67.7% of whom were women, and 32.3% men, with 77.4% identifying as cisgender, 6.5% as transgender, and 16.1% as non-binary. In terms of age, 45.2% were between 18 and 28 years old, another 45.2% were aged 29 to 59, and 9.7% were over 60.

Regarding residency, 77.4% had lived in Colombia for over three years, and 22.6% for one to two years. In terms of family, 71% had family in Colombia, while 29% had family in Venezuela. Among the respondents, 58.1% had children or adolescents in their family group in Colombia, and 31.8% of these minors currently had the PPT, indicating that the biometric data collection process extended to other family members.

b) Knowledge Levels.

In terms of knowledge about biometric or sensitive data, 74.2% did not know what these terms meant, while 25.8% did. For 61.3%, the concept of informed consent⁹ was unclear, and 58.1% were unfamiliar with Colombia's personal data protection law. However, 90% understood the meaning of the PPT.

c) Identification and Rights.

67.7% of respondents applied for the PPT to regularize their status in Colombia and gain access to employment, 54.8% to access healthcare, 32.3% for banking services, and 25.8% because it was required where they lived¹⁰. Additionally, 93.5% said they had no other way to regularize their migration status at the time of application. If they had not obtained the PPT, 51.6% said they would have been forced to leave their home or the country, 45.2%

⁹ Consent: It primarily appears as a legal requirement, typically in the form of a written document—an informed consent document (ICD)—and is established in the context of increasingly autonomous societies that demand respect for their rights and insist on participating in decisions concerning their health, bodies, and lives. (Escobar & Novoa, 2015)

¹⁰ Place of living is understood as the dwelling under a rental agreement.

would have lost their job, 61.3% would not have had access to healthcare, and 35.5% would not have been able to access banking, financial, or educational services.

d) Biometric data collection.

When asked about the moment the migration authority requested their biometric data, respondents provided the following answers: 61.3% denied having signed informed consent before providing their biometric data, 29% did not remember signing any consent, and 9.7% confirmed that they had agreed to informed consent beforehand. Additionally, 96.8% stated that the migration authority offered no alternatives for those who disagreed with providing their biometric data.

e) Risks of Biometric Datafication.

In terms of information security, respondents reported the following: 96.8% said the migration authority did not inform them about the mechanisms used to safeguard and store their biometric data, 29% considered the PPT an insecure form of identification, and another 29% abstained from answering, while 41% believed the PPT was a secure document for identification. Additionally, 83.9% were aware of cases where PPT documents had been issued incorrectly to Venezuelan migrants they knew, 67.7% did not know that biometric data are classified as especially sensitive since they pertain to bodily biology, and 90.3% stated they would have liked the migration authority to explain the risks of providing biometric data before handing them over.

f) Democratic Participation.

Regarding the requirement for biometric data in Colombia, compared to other population groups, 83.9% of respondents felt that Venezuelan migrants were treated unequally compared to Colombian nationals and other foreign nationals. Moreover, 93.5% expressed support for participating in initiatives to reform the policies regarding the collection and processing of biometric data in Colombia.

Section 2. Interviews:

The interviews reflected the perspectives of key actors for Colombia and the Latin American and Caribbean region. The composition of these actors included 30% from national authorities in Colombia, 40% from civil society representatives, 10% from international cooperation partners, and 20% from independent researchers. The findings were as follows:

a. Regularization.

The interviewees expressed concerns about informed consent and gaps in protection for Venezuelan migrants. While authorities claim that consent is explicitly part of the registration process, some experts believe transparency in the application of this regulation is limited. Interviewees noted that although the Temporary Protection Statute has been a step forward in migration regularization, gaps remain that hinder effective migrant integration. Regarding the creation of the PPT document, the authorities stated:

Although Colombia's Ministry of Foreign Affairs authored Decree 216 of 2021, which implements the Temporary Protection Statute for Venezuelan Migrants in Colombia, they indicated that they are not responsible for answering the questions posed by the Cambio Sostenible research team. Therefore, in compliance with Article 21 of Law 1755 of 2015, the request was forwarded to the Unidad Administrativa Especial Migración Colombia (Colombia Migration).

Colombia Migration¹¹ responded to the question of whether there is any alternative mechanism for regularization in case a person refuses to provide biometric data, given their classification as "especially sensitive data." They explained that:

There is no alternative mechanism for regularization within the framework of the Temporary Protection Statute for Venezuelan Migrants to access the PPT. Consent is expressly informed when the individual enters the platform via the privacy notice. In other words, after reading

¹¹ Response obtained from Jorge Luis Guerrero, head of C3 - Subdirectorato de Immigration, in response to an information request filed under case number 20242204144255485.

the data processing policy, Venezuelan citizens freely and voluntarily authorize the collection and processing of information through the Single Registry of Venezuelan Migrants (RUMV).

The response from the Office of the Ombudsman of Colombia¹² was:

While the implementation of the Temporary Protection Statute for Venezuelan Migrants has represented a significant advancement in migration regularization, there are still challenges, gaps, and protection barriers due to delays in the delivery of approved PPT documents and the failure to provide permits. This issue is reflected in the system, where the document appears to have been printed but is not available for physical delivery. This delay hinders the local integration of migrant populations in need of international protection, creating obstacles to accessing rights such as healthcare, education, employment, financial services, and government social programs.

b. Data Minimization.

The principle of data minimization in biometric collection was a recurring topic during the interviews. Experts pointed out that while biometrics can be a useful tool, it is essential to collect only strictly necessary data and to impose time limits on its use.

Interviewees emphasized the need for greater clarity regarding the purpose of this data, especially when dealing with vulnerable populations like migrants. On this principle for comprehensive information management, perspectives like that of Alessia Zucchetti¹³ (Uruguay), state:

The data collected should ideally be for a specific period and purpose, which in the case of biometric data must be very specific and limited. The logic of data minimization must be pursued. The data collected should be the minimum necessary to achieve the specific function.

¹² This entity is responsible for defending, promoting, protecting, and raising awareness about human rights, guarantees, and freedoms for the country's inhabitants (Defensoria del pueblo, 2024)

¹³ Alessia Zucchetti is the Coordinator of Research and Cooperation Projects at LACNIC. Over the past eight years, she has worked in research, international cooperation, and capacity building at the regional and international levels in the fields of technology, digital governance, the Internet ecosystem, and related policies.

c. Rights.

Regarding the perception of rights, Latin American experts interviewed unanimously agreed that access to fundamental rights—such as health, employment, or education—should not be contingent upon the submission of biometric data. This concern is heightened for the Venezuelan population, which already faces significant barriers to integration. Interviewees highlighted that while biometrics can facilitate identification, its use without clear data protection guarantees could jeopardize essential rights. Among the most notable contributions were:

Lina Arroyave (Colombia)¹⁴ stated:

In Colombia, identification is required to access rights, and linking this to biometric data collection is concerning, as biometrics are highly sensitive and difficult to erase from the systems where they are stored.

Kellys Albarrán (Venezuela)¹⁵ added:

The potential violations of human rights in requiring biometric data only from Venezuelans under the protection statute in Colombia stem from political motivations, emerging from disputes between states that interfere in the sovereignty¹⁶ of their neighbors for purposes of social destabilization. The final victim is the population, who lacks the capacity to recognize the discriminatory and rights-violating aspects of such processes.

Other experts shared the following views: Nicolás Zara¹⁷ (Argentina) said, “I find it extremely discriminatory to demand biometric data solely from Venezuelan migrants,

¹⁴ Lina Arroyave is a lawyer with a master's in law from EAFIT University, specializing in research. She is an international researcher on migration and Venezuela for the NGO Dejusticia.

¹⁵ Kellys Albarrán is a practicing lawyer, Colombian-Venezuelan, specialist in Civil Procedural Law, and LGBTIQ+ rights activist. She currently engages in strategic litigation in cases of gender-based sexual violence in Venezuela.

¹⁶ During Iván Duque's administration, Colombia recognized Juan Guaidó's interim government in Venezuela, leading to a significant deterioration in diplomatic relations between the two countries. This impacted the conditions of Venezuelan migrants in Colombia, as it hampered cooperation between the two governments on migration issues, further complicated by the lack of diplomatic and consular representation from both nations. (Chiquiza Nonsoque, 2019)

¹⁷ Nicolás Zara is a researcher at the Center for Studies on Freedom of Expression and Access to Information (CELE). He holds a law degree from the University of Buenos Aires, an LL.M. from Tulane

especially when other nationalities do not face this burden,” Paula Puerto¹⁸ (Colombia) stated, “While biometrics can facilitate processes, they pose risks to personal privacy, particularly regarding how and to what extent this data will be used,” and Cinthia Varela¹⁹ (Peru) added, “Requiring biometric data to access basic services is problematic, especially when there’s no clear understanding of why it’s required or how the information will be used.”

d. Securitization²⁰.

Interviewees also expressed concerns about securitization in the context of regularization, which seems to prioritize national security over the individual rights of migrants. Experts warned that this security-focused approach could lead to excessive surveillance and control of already vulnerable populations. Lina Arroyave (Colombia) commented, “This process is based on a securitization approach, prioritizing national security over the rights of a vulnerable population of a specific nationality,” Kellys Albarrán (Venezuela) pointed out, “his is a clear example of how the state places its interests above individual rights, perhaps motivated by national security concerns,” and Neyza Cruz²¹ (Bolivia) warned:

University, and is pursuing a Master’s in Constitutional Law and Human Rights at the University of Palermo. He teaches Constitutional Law at the University of Buenos Aires.

¹⁸ Paula Puerto holds a degree in International Relations and is a researcher for the Venezuela Observatory at the School of International, Political, and Urban Studies at Universidad del Rosario.

¹⁹ Cinthia Varela is the Executive Director of Kunán, a Peruvian social entrepreneurship platform. Notably, in 2022, Varela was recognized in the ranking of “The 50 Most Powerful Women in Peru” by Forbes magazine and in the publication “Women in the Bicentennial: How We See Peru” in 2021. She is also the president and co-founder of The Family Business School and teaches at Universidad del Pacífico and Universidad Privada de Ciencias Aplicadas.

²⁰ Securitization: A set of measures based on the discourse that defines migrants as a prominent threat to national security (Treviño, 2016)

²¹ Neyza Cruz is a social communicator with postgraduate studies in Population and Development. She is the project coordinator at Fundación Construir in Bolivia.

Global North measures are being applied in the Global South without considering the region's fragility. Cross-border data-sharing agreements²² between states are already in place. Is it transparent and safe to do so?

e. Data Limitation.

The interviewees agreed that there is a lack of transparency regarding the specific uses of biometric data collection and the duration for which the information is retained. This issue was raised by both data protection experts and civil society representatives, who stressed that the highly sensitive nature of biometric data demands strict regulation to prevent misuse or prolonged retention. The purpose limitation of data requests raises concerns among interviewees. Laura Ramos²³ (Colombia) emphasized, "The most important thing is to collect only the data strictly necessary to identify a person," Elis Ortiz Potes²⁴ (Colombia) added:

Biometric data is highly sensitive, and it's hard to believe that institutions can guarantee limitations on its use. These are data related to our physical bodies, and digitizing them for the state in exchange for exercising fundamental rights seems transgressive, especially given the social and economic vulnerability of those under this statute.

f. Discrimination.

All 20 interviewees unanimously recognized the discriminatory nature of mandatory biometric data collection for Venezuelan migrants under the statute, compared to other population groups. Notable opinions included: Nicolas Zara (Argentina), "Yes, there is discrimination based on migrant status, specifically targeting Venezuelans, and this is

²² Guatemala, El Salvador, and Honduras signed a "Biometric Cooperation Agreement" for the identification of criminals in the region. This agreement prioritizes the exchange of biometric information stored in each country's databases (IPANDETEC, 2024).

²³ Laura Ramos is a lawyer and leader of GT-Youth, a group aimed at supporting the Internet Society Colombia Chapter.

²⁴ Elis Ortiz has been a youth spokesperson since 2017 in the ECPAT International Advisory Committee on Children and Adolescents (EICYAC). She is a fifth-semester student in social promotion technology at Universidad Mayor de Cartagena and currently serves as a youth leader and educator at Fundación Renacer.

compounded by race and gender intersectionality,” Karol Chinchilla²⁵ (Costa Rica) stated, “It’s discriminatory to require biometric data from Venezuelan migrants while other groups either don’t face these requirements or it’s entirely voluntary”, Germán López²⁶ (Colombia) added:

You either ask everyone for this data or no one. It’s that simple. Moreover, there was never a clear public explanation as to why this requirement was imposed on irregular Venezuelan migrants, which leads to speculation about the true motivation behind this.

Lina Arroyave (Colombia) also noted:

The treatment is unequal and violates the principle of non-discrimination enshrined in the constitution and reaffirmed by the Constitutional Court²⁷. When distinctive criteria like nationality are used, we must raise alarms about why such criteria are being employed to implement certain measures and policies.

g. Public Policy.

Finally, the interviewees offered insights into possible responses to biometric datafication in migration regularization in Colombia. Among the most common suggestions were transparency in information, public policies focused on ethical procedures for requesting personal information, and the protection of rights. María Elena Villamil²⁸ (Colombia) added:

²⁵ Karol Chinchilla is a designer and leadership mentor in the digital ecosystem of Latin America and the Caribbean. She participates in women’s social groups both inside and outside Costa Rica and is an ally of UN Women. She is a prominent figure in digital inclusion and the empowerment of vulnerable and migrant populations in Central America.

²⁶ Germán López is a lawyer, speaker, and advocate for technological policies, artificial intelligence, and Internet governance. He is the Director of Regulatory Affairs at the Colombian Chamber of Information and Telecommunications Technologies (CCIT). He teaches technology regulation and LegalTech at Universidad Javeriana and Universidad Sergio Arboleda in Colombia.

²⁷ In Colombia, the constitution does not tolerate discrimination, stating that "All individuals are born free and equal before the law, will receive equal protection and treatment from the authorities, and will enjoy the same rights, freedoms, and opportunities without discrimination on the grounds of sex, race, national or family origin, language, religion, political or philosophical opinions (Political Constitution of Colombia, 1991, Article 13).

²⁸ María Elena Villamil is an independent researcher and anthropologist with experience in human rights work. She holds a master’s in Gender Studies and another in Critical Studies of Contemporary Migration.

There should be public dissemination of clear guidelines on how this information is used. For example, in the case of the voluntary biometric registry BIOMIG²⁹, the user understands the procedure and can choose whether to participate without compromising their rights. It would be crucial for all state entities involved in these processes to understand the principles guiding the proper use of data. This would create strong policies for ethical data management.

DISCUSSION OF RESULTS

Mixed analysis

The discussion of results, based on both quantitative and qualitative analysis, reveals significant tensions in the implementation of the Temporary Protection Statute (ETPV) in Colombia particularly regarding the perceptions of Venezuelan migrants and interviewed stakeholders about the biometric data collection process. The main categories of analysis are as follows:

1. Informed consent and rights violations.

Quantitative analysis showed a marked lack of understanding among surveyed beneficiaries regarding the meaning of biometric data and the informed consent process, raising concerns about the migrants' ability to make informed decisions when agreeing to provide their data. One key finding is that 61.3% of respondents reported not signing informed consent before providing their biometric data. This raises concerns about the lack of transparency in the procedures used by migration authorities. In contrast, the authorities stated that a privacy notice³⁰ with informed consent was provided, which creates uncertainty about how consent was communicated to the migrants. This perception is further reflected in

²⁹ BIOMIG is an alternative service that allows quicker entry and exit from Colombian territory through iris enrollment (Colombia Migration)

³⁰ The privacy notice referred to by Migration Colombia was a pop-up window on the website that appeared when beneficiaries registered online, clarifying that there were no alternatives to proceed with the PPT application process unless all the conditions outlined in the notice were accepted (Colombia Migration, 2021).

the 96.8% of respondents who said they were not informed about the safeguarding of their data, highlighting deficiencies in information and security measures. This omission is not merely technical; rather, it seems to suggest a deliberate failure to comply with international standards on the right to privacy and data protection (Universal Declaration of Human Rights, art 12).

Most interviewees agreed on the lack of alternatives to biometric data submission as a requirement for the migration regularization of Venezuelans, emphasizing that this regulatory and operational gap could be interpreted as covert coercion. Migrants are forced to hand over sensitive data without fully understanding the risks or having an alternative option that allows them to avoid submitting such data without affecting their process of obtaining the PPT. This situation is particularly serious considering that migrants, as a vulnerable population, are in a structurally disadvantaged position, preventing them from negotiating the terms of their regularization. Civil society experts highlighted that such practices violate the principles of personal autonomy and free consent.

2. *Securitization of the Migration Process.*

A central theme in the interviews is the perception that using biometrics for regularization is driven by a securitized approach, where national security takes precedence over individual rights. Interviewees criticized that while regularization is necessary, the demand for biometric data seems more aligned with surveillance and control than with providing a comprehensive solution to migration issues. Some pointed out that biometrics are being used without clear and robust mechanisms for data protection and storage, leading to distrust among migrants and human rights organizations. Lina Arroyave highlighted that the state prioritizes national security over individual rights, clearly contradicting the principle of equality before the law.

Although Colombian authorities justify the implementation of the ETPV as a security measure, both qualitative and quantitative data reveal shortcomings, particularly the lack of guarantees in handling biometric information.

3. Structural Discrimination and Social Exclusion

There was near-unanimous agreement on the perception of discrimination in the mandatory collection of biometric data exclusively from the Venezuelan population, compared to other nationalities. This differentiated approach is seen by some as a reflection of diplomatic and political tensions between Colombia and Venezuela, resulting in unequal treatment that may violate human rights. The insistence on requiring biometric data solely from Venezuelan migrants suggests unequal treatment compared to other nationalities, as both survey respondents and interviewees affirmed. This is particularly concerning as it indicates systematic discrimination based on nationality, violating principles of international law, such as Article 26 of the International Covenant on Civil and Political Rights.

From a mixed multidimensional perspective, semi-structured interviews yielded results aligned with quantitative data. For the biometric datafication process in Colombia, 51.1% of beneficiaries stated that without obtaining the PPT, they would be expelled from their residence or forced to leave the country. Interviewed stakeholders also agreed that coercion was involved in demanding these data in exchange for exercising fundamental rights. Many interviewees pointed out that the use of biometric technologies for migration regularization could create structural inequality in the treatment of Venezuelan migrants compared to other nationalities. This perception reflects a feeling of discrimination among Venezuelan migrants, who feel they are subjected to unequal treatment in gaining access to fundamental rights, such as healthcare, education, and employment.

Legal Analysis

a. Legal Context.

In Colombia, the regulation of personal data protection, specifically biometric data, is robust and designed to safeguard individuals' fundamental rights within the framework of national legislation.

Relevant Laws and Statutes.

Statutory Law³¹ 1581 of 2012 on Data Protection: This law classifies biometric data as sensitive data, subject to special restrictions in terms of processing and explicit consent from the data subject. It prohibits the processing of sensitive data, including biometric data, except in clearly justified and protected exceptional circumstances (Congress of the Republic).

Decree³² 1377 of 2013: Partially regulates Law 1581 and establishes guidelines for consent to process sensitive data, as well as the security measures that must be adopted to protect such information.

Related Jurisprudence.

Ruling C-748 de 2011³³: This ruling is crucial because it reaffirms the need for informed consent in the processing of personal data, including biometric data, and emphasizes the importance of protecting individuals' autonomy and privacy.

Key points on its importance:

1. Protection of Personal Data as a Fundamental Right: This ruling explicitly recognizes personal data protection as an autonomous fundamental right, setting a significant

³¹ Statutory laws are special laws in Colombia that regulate fundamental rights and duties of individuals and the administration of justice (MinSalud, 2015)

³² A decree is an administrative act issued by the executive branch with regulatory content, without requiring approval from the legislative body (AGN, 2019)

³³ A Type C ruling is a significant decision by the Constitutional Court, resolving issues of constitutionality (Constitutional Court of Colombia, 2011).

precedent in Colombian jurisprudence and underscoring the importance of safeguarding personal information from misuse and unauthorized access.

2. **Informed Consent:** The ruling stresses the need for informed consent before collecting and processing personal data. It highlights that consent must be clear and explicit, ensuring that individuals fully understand what data is being collected, for what purposes, and how it will be used or shared.

3. **Limitations on Data Processing:** The Court declares that any limitation on the right to habeas data (the right to know, update, and rectify personal information) must be reasonable and proportional. This implies that any measure restricting this right must be adequately justified, balancing the interests at stake and ensuring the effective protection of personal rights.

4. **Impact on Legislation:** This ruling has influenced how data protection legislation is structured in Colombia, including Statutory Law 1581 of 2012, which develops the regulatory framework for personal data protection.

Ruling C-1011 of 2008 (Colombian Constitutional Court): Directly addresses the protection of personal data and the need to ensure adequate security measures for sensitive data. This ruling emphasizes that any exception to the principle of consent must be accompanied by strong protective guarantees.

On Public Policies.

The Temporary Protection Statute for Venezuelan migrants, which includes biometric data collection, occupies a complex space within the legislation. While the goal of regularizing migrants and facilitating their access to services is legitimate and necessary, the use of biometric data raises significant questions about privacy and data protection:

1. Voluntary Consent: It is crucial to ensure that consent for biometric data collection is genuinely voluntary and not the result of implicit coercion, given the vulnerable context of the migrants.

2. Discrimination and Constitutional Justification: The exclusive requirement for biometric data from a specific population (Venezuelan migrants) requires strong constitutional justification to avoid accusations of discrimination.

3. Risks of Surveillance and Misuse: The collection of biometric data increases the risk of mass surveillance and misuse, necessitating the implementation of rigorous technical and legal safeguards.

Resolution³⁴ 971 of 2021, issued by Colombia Migration, is fundamental in regulating biometric datafication in migration processes. This resolution implements the Temporary Protection Statute for Venezuelan Migrants, established by Decree 216 of 2021, and is a key document detailing the procedures and requirements for regularizing Venezuelan migrants in Colombia, including biometric data collection.

Relevant Articles of Resolution 971 of 2021.

Articles 5 and 13: These articles establish the mandatory Single Registry of Venezuelan Migrants (RUMV) and the PPT. Registration requires biometric data collection as part of the PPT application.

Article 9: Refers to the updating of registration information, highlighting the importance of maintaining up-to-date biometric data as a continuous requirement for migrants.

³⁴ A resolution is an administrative act or document, either general or specific, signed by an authorized individual on behalf of a public entity in Colombia (Minciencias)

The key concern here is whether biometric data collection is conducted under free and informed consent, which is a fundamental principle in data protection law. According to Law 1581, processing sensitive data, such as biometric data, requires explicit consent unless necessary to safeguard the data subject's vital interests or for legal requirements in judicial procedures. The regularization process established in Resolution 971 of 2021 requires that the first step for Venezuelan citizens is to complete a socioeconomic characterization survey called the Single Registry of Venezuelan Migrants (RUMV)³⁵. This survey includes specific information related to health, education, training, integration, inclusion, and other sectors to assess their conditions in Colombia. Only after this is it possible to proceed to the mandatory and essential stage of collecting sensitive biometric data. This raises questions about the state's adherence to the fundamental principle of data minimization, which requires that collected data be adequate, relevant, and limited to what is necessary concerning the intended purposes.

b. International Ethical Standards.

The "Biometrics Compendium" from the United Nations Office of Counter-Terrorism offers detailed guidance on how biometric technologies should be implemented in a way that respects human rights and upholds high ethical and legal standards (UN, 2018). At the core of its recommendations is the protection of privacy and individual identity, which aligns closely with the challenge Colombia faces in handling biometric data from Venezuelan migrants under the Temporary Protection Statute.

The compendium urges states to ensure that any use of biometrics complies not only with local laws but also with international commitments, such as those outlined in the

³⁵ The RUMV Virtual Pre-registration, the socioeconomic characterization survey, and the in-person biometric registration are required steps to continue the application process for the Temporary Protection Permit (PPT), except for children under 7 years old as outlined in Title IV.

International Covenant on Civil and Political Rights³⁶, to which Colombia is a signatory. In this context, ethics emerges as a crucial pillar, emphasizing the need to apply biometrics fairly and without discrimination—vital in a country that has become the largest recipient of Venezuelan migrants in the world.

The compendium also stresses the need for rigorous risk management and data protection. This involves establishing clear policies on how and for how long biometric data should be stored, ensuring secure data handling to prevent breaches that could expose migrants to new risks. Transparency in these processes is essential, with regular audits and independent reviews to validate compliance with established policies and procedures.

These measures are not just best practice recommendations; they are critical needs in a country where biometric data policies must carefully balance respect for individual rights. This international framework serves as a basis for evaluating whether Colombia's policies align with globally recommended practices.

c. Contrasts and Trends for Regulatory Transformation.

Globally, the management of biometric data presents a mosaic of approaches and regulations, with significant implications for human rights and privacy. The European Union and India offer two contrasting examples that can shed light on the Colombian context as it moves towards a more robust and secure management of such data.

European Union: Under the General Data Protection Regulation (GDPR), the EU has established one of the strictest frameworks for personal data protection, including biometrics. The GDPR classifies biometric data as "sensitive data," subject to special protections and only processed under very restricted conditions. This ensures that the use of biometric technologies must be transparent, fair, and based on explicit individual consent, except in clearly defined circumstances justified by significant public interest.

³⁶ Colombia ratified the International Covenant on Civil and Political Rights in 1969 (UN, 2009).

India: In contrast, India's Aadhaar system, the world's largest biometric identification program, illustrates the risks and benefits of a massive, centralized approach. While it has facilitated access to essential services and social benefits, it has also raised significant concerns about privacy and data security, especially following several data breaches. Despite security measures, the centralization and scale of the Aadhaar program continue to pose challenges in terms of potential vulnerabilities and the misuse of personal data.

Colombia: In the Colombian context, the situation is at a turning point as the country seeks to transform its legislative framework³⁷ to align more closely with international standards like the GDPR. This includes reviewing existing laws and proposing new regulations to strengthen consent and transparency in the use of biometric data.

Additionally, Colombia's digital jurisdiction is being tested in cases like the litigation against Google³⁸, which could set important precedents for online data protection. This case highlights the need for robust controls and accountability mechanisms for large digital platforms operating in the country.

However, challenges persist, as demonstrated by the devastating ransomware attack in early September 2023, which crippled numerous government services and exposed critical vulnerabilities in the country's IT infrastructure³⁹. This incident underscores the urgent need to strengthen cybersecurity and data protection policies at all levels of government and industry.

d. Perspectives.

Possible Transition to a Surveillance State: The Colombian context, marked by initiatives like the Temporary Protection Statute for Venezuelans requiring biometric data for

³⁷ This Bill will allow Colombia to make effective digital transformation progress, better equipping the public sector to make data-driven decisions (Porrás, 2024).

³⁸ Google refuses to comply with Law 1581 of 2012 in Colombia (Escobar & Riaño, 2024)

³⁹ Colombia experienced a ransomware attack by the criminal group RansomHouse (Botero, 2023), compromising the privacy of millions of citizens through the theft of sensitive data, making Colombia the most targeted country in the region for cyberattacks (FORBES, 2024)

migrant regularization, suggests a potential shift towards surveillance and securitization practices. Additionally, an agreement between the Supreme Court of Justice and the National Civil Registry ⁴⁰, in the first half of 2024 allows the Court to access biometric databases from the National Identification Archive (ANI) and the Civil Registration Information System (SIRC) to verify identities in judicial processes. While aimed at improving justice administration, this could also facilitate the indiscriminate use of personal information. In 2021, the debate in the Constitutional Court on the Electoral Code⁴¹ included a controversial article granting the National Registry exclusive control over biometric identification and authentication. This article, passed without thorough debate in Congress, was criticized by various sectors as an attempt to create a state monopoly on biometric data, potentially excluding private entities from the identification process and endangering individual freedoms and the right to privacy.

In this sense, there is a perception that the regularization process for Venezuelan migrants, where biometric data was collected under the promise of social benefits, served as a test run for what is now being implemented nationally. This suggests a possible trend towards the Colombian state's mass and centralized use of biometric data without sufficient legal safeguards. As such, the move towards indiscriminate use of biometric data in Colombia, under the pretext of improving security and justice administration, must be carefully evaluated and regulated.

International Comparison and Recommendations: Looking at international systems like India's Aadhaar and the EU's GDPR, Colombia could benefit from reassessing its approach to biometric data collection. Colombian legislation and policies should strengthen consent mechanisms, ensuring migrants fully understand and voluntarily agree to the use of

⁴⁰ In addition to biometric data sharing, Colombia's National Civil Registry has announced the development of an app to verify the identity of individuals using public services (Largo, 2024)

⁴¹ Recently, the Constitutional Court declared the Electoral Code unconstitutional due to the lack of prior consultation and procedural flaws (El Espectador, 2024)

their biometric data, while limiting the use of this data to clearly defined and time-bound purposes.

Implementation Challenges: As seen with the recent ransomware attack affecting government systems in 2023, the risks of cybersecurity are tangible and require stronger IT infrastructures to protect citizens' sensitive data. This highlights the need for a more robust cybersecurity policy and procedures to ensure the integrity and security of personal information.

Promoting Democracy and Citizen Participation: It is essential to promote a culture of data protection where transparency and citizen participation are prioritized. Migrants, as subjects of these policies, must have a say in how their data is managed and be informed of their rights. Establishing dialogue forums and feedback mechanisms can help tailor policies to the real needs and perceptions of migrants, avoiding alienation and resistance to such measures.

e. Legal Status and Contrast: Jurisprudence, Public Policy, and Ethical Compliance in the Context of the Temporary Protection Statute.

From a legal standpoint, Colombia's data protection legislation, especially Statutory Law 1581 of 2012 and key Constitutional Court rulings like Ruling C-748 of 2011 and C-1011 of 2008, has established a robust framework for protecting sensitive data, including biometric data. These regulations emphasize the importance of informed consent, data minimization, and protection against misuse—necessary conditions to ensure that data processing does not violate privacy or the right to informational self-determination.

From an ethical perspective, the implementation of public policies requiring biometric data collection in this context must align not only with national and international legal frameworks but also with an approach that prioritizes the dignity and rights of migrants as human beings. Ethical data management cannot be limited to regulatory compliance; it must include an active commitment to transparency, fairness, and non-discrimination. This

requires that Venezuelan migrants, as subjects of these policies, not be treated merely as data or numbers but as individuals whose voices and concerns must be heard and addressed in the design and implementation of these policies.

Thus, the challenge of balancing the need for state control and migration regularization with respect for fundamental rights presents an ongoing issue for Colombia. The key lies in adopting an ethical approach that, while promoting security and efficiency, respects democratic principles and individual rights, ensuring that procedures related to the Temporary Protection Statute remain within an appropriate framework of proportionality and human rights protection.

CONCLUSIONS

Lack of Transparency in Consent: The fact that 61.3% of respondents do not recall signing informed consent for the collection of their biometric data reveals a serious failure in the information mechanisms used by migration authorities. This gap creates distrust and can be seen as a violation of fundamental rights, particularly in a sensitive migration context.

Risk of Mass Surveillance: The extensive use of biometric technologies without clear alternatives for migrants suggests a shift toward securitization at the expense of individual rights. The perception of control over the Venezuelan population reinforces the notion of a potential surveillance state, raising concerns for society and human rights organizations.

Systematic Discrimination: The perception of unequal treatment in the collection of biometric data from Venezuelan migrants compared to other foreign populations sets a dangerous precedent. Decisions driven more by political interests than the protection of rights worsen the vulnerability of this population, condemning them to social exclusion. This effectively classifies Venezuelan migrants as second-class citizens, with a temporary identification document conditional on biometric data collection.

Deficiencies in Data Protection: Despite government justifications based on efficiency and security, the scope of the data collected may exceed the specific purposes of migration regularization, posing risks to data integrity and raising concerns about potential misuse or data breaches.

Impact on Democratic Participation: The perception of coercion in providing biometric data and the lack of viable alternatives for migrants highlights how this process undermines their democratic participation and their ability to exercise fundamental rights freely and voluntarily. This suggests the need for a more detailed and specific regulatory framework regarding the use of biometric data in migration policies, ensuring the full protection of fundamental rights in line with Colombia's constitutional and legal standards..

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