

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: 4th Cycle, 41st Session

BRAZIL

I. BACKGROUND INFORMATION

Brazil ratified the *1951 Convention relating to the Status of Refugees* in 1960 and its *1967 Protocol* in 1972 (hereinafter jointly referred to as the *1951 Convention*). Brazil ratified the *1954 Convention relating to the Status of Stateless Persons* in 1996 and the *1961 Convention on the Reduction of Statelessness* in 2007 (the *1954 Convention* and the *1961 Convention* respectively).

Together with 27 other Latin American and Caribbean countries, in December 2014 Brazil adopted the *Brazil Declaration and Plan of Action*¹ (hereinafter referred to as the BPA) an important regional framework to strengthen the international protection of refugees, displaced and stateless persons.

At the national level, the *1988 Constitution* provides for a wide range of fundamental rights applicable to Brazilian nationals and foreigners alike while *Law 9.474*², which has been in effect since 23 July 1997, is the implementing legislation of the *1951 Convention* and incorporates the wider refugee definition contained in the *1984 Cartagena Declaration*. It sets out a framework for refugee protection, including the creation of the National Committee for Refugees (CONARE), an inter-ministerial and inter-institutional refugee status determination body, where UNHCR holds an observer status, which is also responsible for guiding and coordinating the actions required for protection, assistance, and legal support for refugees and asylum-seekers.

Refugees and asylum-seekers:

In June 2019, CONARE issued a decision applying the extended refugee definition to Venezuelan nationals and those affected by the humanitarian crisis in Venezuela based on an assessment of Venezuela's objective country circumstances which Brazil characterized earlier that year as one of "serious and generalized violations of human rights". To this end, Brazil adopted *prima facie* simplified asylum procedures and began issuing refugee recognitions under this approach in December 2019. In August 2021, CONARE extended the *prima facie* recognition of Venezuelans until December 2022, to be reassessed then.

As of December 2021, Brazil is host to 305,076 Venezuelan refugees and migrants of whom 85,738 are asylum-seekers, 166,630 hold temporary or permanent migratory residence permits, and 50,414 are refugees, representing the highest number of recognized Venezuelan refugees by any Latin American government. Including Venezuelan nationals, the Government of Brazil has recognized a total of 62,000 refugees of 109 nationalities³.

¹ Regional Refugee Instruments & Related, *Brazil Declaration and Plan of Action*, 3 December 2014, available at: <http://www.refworld.org/docid/5487065b4.html>.

² Law No. 9.474 of 1997 is the implementing legislation of the 1951 Convention on the Status of Refugees, available at: <http://www.refworld.org/docid/3f4dfb134.html>.

³ Information is regularly updated and available at the joint CONARE/UNHCR Dashboard on RSD decisions, available at:

<https://app.powerbi.com/view?r=eyJrIjoibjNTQ4MTU0NGltYzNkMi00M2MwLWFhZWVtMDBiM2I1NWVjMTY5liwidCI6ImU1YzM3OTgxLTUyNjQtdEzNC04YTBJLTUyNDNkMmFmODBiZSIsImMiOjIj>

Moreover, there are 6,467 Venezuelans indigenous in Brazil comprising Warao (70%), Pemon (24%), Eñepá (3%), Kariña (1%) and Wayúu (1%) ethnicities consisting of 49% asylum-seekers, 13% refugees, and 38% holding another legal status, namely migratory residence permits.

In addition to Venezuelan arrivals, as of December 2021, the top five nationalities with pending asylum claims are Haiti (20,879), Cuba (6,395), China (4,303), Angola (2,877) and Bangladesh (2,173), among others representing an additional 18,023 claims.

Stateless persons:

Brazil does not host a large stateless population, mainly due to the *jus solis* principle enshrined in the Constitution, whereby every person born in Brazil automatically acquires Brazilian nationality. However, federal *Law 13445/2017*, known as the Migration Law, sets out the definition of stateless persons reflecting the text of the *1954 Convention*, while Inter-Ministerial Ordinance 5 (28 February 2018) regulates the statelessness determination procedure and facilitated naturalization. Moreover, in 2021, the Brazilian Ministry of Justice and Public Security launched SisApatridia, an online platform dedicated to the submission and processing of statelessness recognition claims. This is expected to improve data quality on this population of concern, accelerate processing of statelessness recognition claims and consequently, facilitate naturalization, improving protection prospects for stateless persons in Brazil.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Linked to 3rd cycle UPR recommendation no. 136.244: “Implement the recently approved new Migrants Law and its human rights perspective on the migration issue” (Timor-Leste).

The Brazilian Government remains committed to supporting Venezuelan refugees and migrants through a comprehensive response – *Operation Welcome* – which has been regarded as a good practice in the provision of protection, assistance, and durable solutions in the region. Established in 2018, the federal response is focused on the northern states of Roraima and Amazonas where reception and documentation, as well as shelter and other humanitarian assistance services are provided jointly with UN Agencies and civil society organizations, and from where the Government continues to operate its voluntary internal relocation strategy in supporting the durable solution of local integration. As of December 2021, 66,257 refugees and migrants have been relocated to nearly 800 municipalities across the national territory of Brazil. The Ministry of the Presidency continues to lead the overall strategic coordination of this emergency response, while the operational implementation is overseen by the Ministry of Defense, through the establishment of a Humanitarian-Logistic Task Force. Refugees and migrants have been included in Vaccination Programs throughout the country and have been eligible to receive COVID-19 Emergency Aid, an emergency cash assistance social welfare program.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 3rd cycle UPR recommendations

Issue 1: Access to territory & protection from *refoulement*

Linked to 3rd cycle UPR recommendation no. 136.244: “Implement the recently approved new Migrants Law and its human rights perspective on the migration issue” (Timor-Leste).

Between 18 March 2020 and 22 June 2021, the Government of Brazil imposed temporary entry restrictions on foreigners entering by land as part of sanitary measures on account of the COVID-19 pandemic without providing an exception on entry for individuals in need of international protection. On 23 June 2021, the Government issued Ordinance 655⁴ which established flexible admission by land of individuals affected by the humanitarian crisis in Venezuela, while maintaining that Brazil's land borders, with the exception of its border with Paraguay, remained closed. While remedying access to international protection for Venezuelans and those affected by the humanitarian crisis in Venezuela, Ordinance 655 and others continued to restrict entry by land of other foreign nationals in need of international protection. However, as of 20 December 2021, Ordinance 663 has since removed all restrictions on entry by land for foreign nationals, now permitting entry of all nationalities in need of international protection, subject to proof of COVID-19 vaccination, exempting from this requirement those affected by the humanitarian crisis in Venezuela among other categories.

Recommendations:

UNHCR recommends that the Government of Brazil:

- a) Maintain continued access to territory and protection from *refoulement* for all persons in need of international protection.

Additional protection challenges

Issue 2: Access to asylum procedures

As noted above, between 18 March 2020 and 22 June 2021, temporary entry restrictions on foreigners entering by land were imposed. Individuals who entered the territory irregularly were disqualified from applying for asylum per the inter-ministerial ordinances published at the time.

Upon issuance of Ordinance 655⁵ (23 June 2021), individuals affected by the humanitarian crisis in Venezuela who entered Brazil irregularly during the period of the pandemic (as of 18 March 2020) have since been permitted to regularize their legal status in applying for asylum or a migratory residence permit. However, foreign nationals who have not been affected by the crisis in Venezuela, who entered the country irregularly after 18 March 2020 and are in need of international protection have been unable to access asylum procedures to date under restrictions⁶ still present in each published Ordinance⁷ which conflict with the Government of Brazil's international and national obligations on the right to submit an asylum claim regardless of means of entry.⁸ Access to asylum procedures for persons manifesting a need of international protection is necessary to ensure protection from *refoulement*.

Moreover, individuals affected by the humanitarian crisis in Venezuela who have entered the country irregularly after 18 March 2020 are able to access asylum procedures only upon proof of vaccination, according to Ordinance 663, of 20 December 2021, without affording any exemptions as are being accorded to new arrivals affected by the humanitarian crisis in Venezuela seeking entry by land⁹.

Recommendations:

⁴ Available at: <https://in.gov.br/en/web/dou/-/portaria-n-655-de-23-de-junho-de-2021-327674155>.

⁵ Available at: <https://in.gov.br/en/web/dou/-/portaria-n-655-de-23-de-junho-de-2021-327674155>.

⁶ For example, see Article 15(III), available at: <https://www.in.gov.br/en/web/dou/-/portaria-interministerial-n-663-de-20-de-dezembro-de-2021-368622644>.

⁷ Through to the time of this submission.

⁸ See Article 8 of Brazil's national refugee law, Law N. 9474 (22 July 1997) available at: http://www.planalto.gov.br/ccivil_03/leis/19474.htm.

⁹ See Article 16, available at: <https://www.in.gov.br/en/web/dou/-/portaria-interministerial-n-663-de-20-de-dezembro-de-2021-368622644>.

UNHCR recommends that the Government of Brazil:

- a) Ensure timely and effective access to asylum procedures for all persons in need of international protection and at risk of refoulement.

Issue 3: Strengthen solutions to indigenous people in need of international protection

The displacement of Venezuelan indigenous refugees and migrants to Brazil became more significant in 2014, when small indigenous groups began arriving in the States of Roraima and Amazonas. This movement is characterized by an influx of various indigenous ethnicities, such as Warao, Pemon, Eñepá and Kariña. By December 2021, more than 6,000 indigenous people from Venezuela had reached Brazil seeking protection and assistance, mainly in the states of Roraima, Amazonas and Pará, but also in continuous displacement to other regions in Brazil. The indigenous communities face intersectional challenges as both indigenous people and as people forcibly displaced and in need of international protection, requiring culturally differentiated public policies and durable solutions in both urban and rural areas, including opportunities for self-reliance.

Recommendations:

UNHCR recommends that the Government of Brazil:

- a) Strengthen public policies for the benefit of the Venezuelan refugee and migrant indigenous communities living in urban and rural areas, to support their social welfare, cultural preservation, autonomy, and self-reliance.

UNHCR
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