



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

60
YEARS

**Submission by the United Nations High Commissioner for Refugees
for the Office of the High Commissioner for Human Rights' Compilation Report**

- Universal Periodic Review:

BRAZIL

I. Background information and current situation

Brazil ratified the *1951 Convention Relating to the Status of Refugees* ("1951 Convention") in 1961 and its *1967 Protocol* in 1972. Brazil enacted the refugee Law number 9.474, which has been in effect since 23rd July 1997. The law contains the protection mechanism of the 1951 Convention and 1967 Protocol and incorporates the wider refugee definition contained in the 1984 Cartagena Declaration.

Brazil is a party to both the *1954 Convention on the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*. The constitutional amendment 54/07 ensured the registry of Brazilian children born abroad in respective consulates to grant them nationality, without further requirements.

The 2004 Mexico Plan of Action and the 2010 Brasilia Declaration are the main frameworks that will shape UNHCR's advocacy strategy in the following years. This strategy includes lobbying for the passing of a new law on the rights of migrants living in Brazil and for the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The ratification to the Convention on Migrant Workers could enhance the protection of persons in need of international protection by establishing certain entitlements that would benefit all migrants, including refugees and stateless persons.

Structures for the reception of asylum-seekers are in place in São Paulo, Rio de Janeiro, Manaus and Brasilia, where counseling, legal, humanitarian and psychological assistance is being provided to refugees and asylum-seekers. UNHCR and its partners continue to advocate for the systematic inclusion of refugees in all Government welfare programs implemented at the municipal level.

II. Population of concern

By September 2011, there were 4,440 recognized refugees in Brazil. Of that number, 427 had arrived in Brazil through resettlement, mostly Colombian refugees from Ecuador in the framework of the Regional Solidarity Resettlement programme. Colombians, Congolese and Angolans make up the largest refugee caseload in Brazil.

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. Brazil does not have official figures on the number of stateless persons in the country. Five stateless refugees have officially been identified by the National Refugee Committee. According to unofficial data, some 3000 stateless persons have been granted documentation from the Brazilian Government.

The influx of Haitians represented a major population movement coming into Brazil in 2010 and 2011. According to the National Committee for Refugees (CONARE) 2,541 Haitians have entered into Brazilian territory since the 2010 earthquake.

The vast majority of Haitians do not qualify as refugees, as they were fleeing from the consequences of the 2010 earthquake. However, they have requested asylum as there is no other option to access the National Immigration Council (CNIg) for humanitarian assistance.

CONARE's members already decided that the asylum claims made until June 2011 be referred to CNIg for further analysis. So far, 632 Haitians have been granted permanent visas issued by CNIg on humanitarian grounds.

It would appear that CONARE's approach to claims presented after June will be reflected in the results of a governmental debate held at the ministerial level. Two possibilities are being considered: 1) CNIg will keep assessing the claims on humanitarian grounds, or 2) CONARE will resume its analysis under the 1951 Convention and the Brazilian refugee law.

III. Achievements and Best Practices

1. Regulation of the resettlement programme

CONARE adopted a Normative Resolution that regulates the Brazilian resettlement program. The text of the regulation has been drafted by the executive secretary of CONARE, with the support of the NGOs involved with resettlement and UNHCR.

2. Consideration of ratification the UN Convention on the Protection of the Rights of All Migrant Workers

During the High Commissioner's mission to Brazil in August 2011, the President of the Chamber of Deputies, Mr. Marco Maia, indicated the Government's intention to establish a Special Commission to analyze the ratification of the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their families, which would benefit refugees and asylum-seekers. This Commission is essential to achieve the ratification of the Convention.

3. Presentation of a draft bill on statelessness

The Deputy Minister of Justice, Mr. Barreto, gave the High Commissioner a draft of the bill proposal on statelessness during his visit. The bill is anticipated to be one of Brazil's pledges for the forthcoming Ministerial-Level Meeting in Geneva of all UN Member States, to mark the 60th anniversary of the 1951 Refugee Convention and the 50th anniversary of the 1961 Convention on the Reduction of Statelessness. The bill would enable the establishment of a statelessness status determination procedure and

would guarantee the issuance of a Brazilian ID for recognized stateless persons, allowing a permanent visa after four years of residence in the country.

4. Pending draft Migration law

The national migration law is outdated and restrictive, which results in migrants using the asylum process in an attempt to legalize their stay in Brazil. The bill of the new immigration law has not been voted on yet. The text of the bill has important advances, for example, the National Immigration Council would have the competence of granting visas under humanitarian grounds. This means there would be a complementary protection mechanism independent from the National Refugee Committee.

5. Regulation on the issuance of visas to victims of human trafficking

The National Immigration Council approved in December 2010 a Normative Resolution, which permits the granting of permanent visas to foreigners considered victims of human trafficking.

6. Establishment of State Committees for Refugees

The establishment of State Committees for Refugees in São Paulo and Rio de Janeiro constitute a very positive development, as there is an important challenge ahead in implementing the local integration agenda for refugees. The aims and activities of these committees include the facilitation of refugees' access to public policies at the local level.

7. Reduction of duration of permanent residency as one of the requirements for naturalization

Regarding the permanent residency request, according to the Normative Resolution n° 91/2010, from November 2010, the National Immigration Council has reduced the period for requesting Permanent Residency from 6 to 4 years. This is a first step in eliminating the period necessary for acquiring citizenship.

IV. Challenges and recommendations to the Government of Brazil

Issue 1: Refugees usually face some level of discrimination due to their migratory situation. This also results from the misinterpretation of the meaning of the word refugee, which appears on their official ID. The situation hampers the social and economic integration of refugees in Brazil, as they experience discrimination and a loss of job opportunities. Addressing discrimination and marginalization of UNHCR's persons of concern is crucial to enhancing their protection and expanding opportunities for their integration in Brazil. Given the importance of national identity cards, in particular for providing access to the labour market and the credit system, eliminating the word refugee as it appears in the ID card and referring to the Brazilian refugee law, is a measure that will help facilitate the integration of refugees into Brazilian society.

Recommendation: Ensure the expeditious issuance of national identity cards to recognized refugees by the Federal Police to facilitate their integration.

Issue 2: Refugees continue to face obstacles in having their foreign educational and professional diplomas recognized in Brazil.

Recommendation: In coordination with the Ministry of Education, the autonomous public universities and professional associations, facilitate the recognition of educational documentation and diplomas presented by persons in need of international protection.

Issue 3: In 2010, a new law gave permission to the military armed forces at the borders to search persons, vehicles, vessels and aircraft, as well as make arrests. Until now this was a responsibility exclusive to the federal police. This may cause concern for UNHCR, as many refugees may be intercepted as illegal migrants, especially in the Amazon Region. The Government should be prepared to deal effectively with mixed migration flows to ensure access of persons in need of international protection to fair and adequate RSD procedures. The rotation scheme of the Federal Police combined with the enormous length of the country's external border complicate the monitoring and effective training of the responsible authorities. It should be noted that a large part of the Federal Police in border areas lack the capacity and skills to deal with refugees and other migrants.

Recommendation: Effectively deal with mixed migration flows, ensuring access of persons in need of international protection to fair and adequate RSD procedures by establishing protection-sensitive entry mechanisms and ensuring the adequate training of the Federal Police and the Armed Forces. .

Issue 4: The lack of a comprehensive database for refugees and asylum-seekers represents a major gap hindering the ability of the authorities to assess needs and identify protection concerns. Persons of concern in the Amazon region have limited access to the asylum procedure and hence remain in a precarious situation lacking access to social services. However, the work of UNHCR in Manaus, together with partners and the security network in the region has proved to be effective in encouraging the Federal Police to speed up the documentation for asylum-seekers in the Northern region.

Recommendation: Develops a database that allows for systematic data analysis based on the breakdown of gender, age and nationality. The changes in the refugee population should be reflected adequately in the database (for example by closing the cases of the individuals that passed away and those who naturalized as Brazilian citizens).

Issue 5: CONARE's administrative staff is overwhelmed by their amount of work. Three eligibility officers are responsible for the administrative work, conducting interviews with asylum-seekers throughout the country and provide advice to CONARE members on the eligibility of applicants for refugee status. Additionally, only one person acts as focal point for statistical reports. Due to the amount of work, lack of budget and the enormous size of the national territory, CONARE staff often conducts interviews with asylum-seekers living in distant areas by telephone. These interviews are usually not sufficiently detailed and asylum-seekers are not given the orientation they would otherwise receive.

Recommendations: Increase the human resources of CONARE to allow for adequate processing of the growing number of asylum applications and for increased activities to promote the integration of refugees. Ensure that all asylum-seekers are given the opportunity of a personal interview to provide sufficient guarantees to asylum-seekers and enhance the quality of the refugee status determination procedures. In the event of a denial of recognition of refugee status, the respective asylum-seeker should be informed about the reasoning for the rejection to enable him/her to effectively appeal against the negative decision.

Issue 6: More efforts are needed to facilitate the local integration of refugees, including those being resettled to Brazil from first countries of asylum and ensure that their specific protection needs are effectively addressed. The respective activities in this field are still largely carried out and financed by UNHCR and its implementing partners. UNHCR advocates for the Government to take on the resettlement programme and address the most vulnerable populations.

Recommendation: Intensify the efforts to facilitate local integration of refugees and to ensure the effective management of the resettlement program.

Issue 7: Refugees still do not have equal access to some social and public services, particularly in the case of housing programmes and pensions. In addition, access to adequate housing is very limited due to the high costs and documentation requirements. Some important public services can only be accessed by foreigners that have permanent status or have been naturalized. Examples of this include the BPC (federal assistance to elderly and disabled persons that could benefit the most venerable persons) and “Minha Casa Minha Vida” (public policy that facilitates the credit to purchase houses).

Recommendation: Ensure that all refugees have access to public services on equal terms as other categories of foreigners, and where possible, even in the same conditions as Brazilian nationals.

Issue 8: Due to the lack of public shelters in Brazil, reception of refugees remains problematic. Shelter and housing for asylum-seekers and refugees is one of the greatest challenges.

Recommendation: Establish more public shelters that can be used to accommodate persons in need of international protection arriving to Brazil.

**Human Rights Liaison Unit
Division of International Protection
UNHCR
November 2011**

Annex

Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report

- Universal Periodic Review:

BRAZIL

I. Background information and current situation

Brazil ratified the *1951 Convention Relating to the Status of Refugees* ("1951 Convention") in 1961 and its *1967 Protocol* in 1972. Brazil enacted the refugee Law number 9.474, which has been in effect since 23rd July 1997. The law contains the protection mechanism of the 1951 Convention and 1967 Protocol and incorporates the wider refugee definition contained in the 1984 Cartagena Declaration.

Brazil is a party to both the *1954 Convention on the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*. The constitutional amendment 54/07 ensured the registry of Brazilian children born abroad in respective consulates to grant them nationality, without further requirements.

The 2004 Mexico Plan of Action and the 2010 Brasilia Declaration are the main frameworks that will shape UNHCR's advocacy strategy in the following years. This strategy includes lobbying for the passing of a new law on the rights of migrants living in Brazil and for the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The ratification to the Convention on Migrant Workers could enhance the protection of persons in need of international protection by establishing certain entitlements that would benefit all migrants, including refugees and stateless persons.

Structures for the reception of asylum-seekers are in place in São Paulo, Rio de Janeiro, Manaus and Brasilia, where counseling, legal, humanitarian and psychological assistance is being provided to refugees and asylum-seekers. UNHCR and its partners continue to advocate for the systematic inclusion of refugees in all Government welfare programs implemented at the municipal level.

II. Population of concern

By September 2011, there were 4,440 recognized refugees in Brazil. Of that number, 427 had arrived in Brazil through resettlement, mostly Colombian refugees from Ecuador in the framework of the Regional Solidarity Resettlement programme. Colombians, Congolese and Angolans make up the largest refugee caseload in Brazil.

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. Brazil does not have official figures on the number of

stateless persons in the country. Five stateless refugees have officially been identified by the National Refugee Committee (CONARE). According to unofficial data, some 3,000 stateless persons have been granted documentation from the Brazilian Government.

The influx of Haitians represented a major population movement coming into Brazil in 2010 and 2011. According to the National Refugees Committee 2,541 Haitians have entered into Brazilian territory since the 2010 earthquake.

The vast majority of Haitians do not qualify as refugees, as they were fleeing from the consequences of the 2010 earthquake. However, they have requested asylum as there was no other option to access the National Immigration Council (CNIg) for humanitarian assistance.

CONARE's members already decided that the asylum claims made until June 2011 be referred to CNIg for further analysis. So far, 632 Haitians have been granted permanent visas issued by CNIg on humanitarian grounds.

III. Achievements and Best Practices

1. Regulation of the resettlement programme

CONARE adopted a Normative Resolution that regulates the Brazilian resettlement program. The text of the regulation has been drafted by the executive secretary of CONARE, with the support of the NGOs involved with resettlement and UNHCR.

2. Consideration of ratification the UN Convention on the Protection of the Rights of All Migrant Workers

During the High Commissioner's mission to Brazil in August 2011, the President of the Chamber of Deputies, Mr. Marco Maia, indicated the Government's intention to establish a Special Commission to analyze the ratification of the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their families, which would benefit refugees and asylum-seekers. This Commission is essential to achieve the ratification of the Convention.

3. Presentation of a draft bill on statelessness

The Deputy Minister of Justice, Mr. Barreto, gave the High Commissioner a draft of the bill proposal on statelessness during his visit. The bill is one of Brazil's pledges for the Ministerial-Level Meeting in Geneva of all UN Member States, to mark the 60th anniversary of the 1951 Refugee Convention and the 50th anniversary of the 1961 Convention on the Reduction of Statelessness. The bill would enable the establishment of a statelessness status determination procedure and would guarantee the issuance of a Brazilian ID for recognized stateless persons, allowing a permanent visa after four years of residence in the country.

4. Pending draft Migration law

The national migration law is outdated and restrictive, which at times results in migrants using the asylum process in an attempt to legalize their stay in Brazil. The bill of the new immigration law has not been voted on yet. The text of the bill has important advances, for example, the National Immigration Council would have the

competence of granting visas under humanitarian grounds. This means there would be a complementary protection mechanism independent from the National Refugee Committee.

5. Regulation on the issuance of visas to victims of human trafficking

The National Immigration Council approved in December 2010 a Normative Resolution, which permits the granting of permanent visas to foreigners considered victims of human trafficking.

6. Establishment of State Committees for Refugees

The establishment of State Committees for Refugees in São Paulo and Rio de Janeiro constitute a very positive development, as there is an important challenge ahead in implementing the local integration agenda for refugees. The aims and activities of these committees include the facilitation of refugees' access to public policies at the local level.

7. Reduction of duration of permanent residency as one of the requirements for naturalization

Regarding the permanent residency request, according to the Normative Resolution nº 91/2010, from November 2010, the National Immigration Council has reduced the period for requesting Permanent Residency from 6 to 4 years. This is a first step in eliminating the period necessary for acquiring citizenship.

IV. Challenges and recommendations to the Government of Brazil

Issue 1: Refugees may face some level of discrimination due to their migratory situation. This also results from the misinterpretation of the meaning of the word refugee, which appears on their official ID. Addressing discrimination and marginalization of UNHCR's persons of concern is crucial to enhancing their protection and expanding opportunities for their integration in Brazil. Given the importance of national identity cards, in particular for providing access to the labour market and the credit system, eliminating the word refugee as it appears in the ID card and referring to the Brazilian refugee law, is a measure that will help facilitate the integration of refugees into Brazilian society.

Recommendation: Continue to ensure the expeditious issuance of national identity cards to recognized refugees by the Federal Police to facilitate their integration.

Issue 2: Administrative obstacles exist for foreign educational and professional diplomas to be recognized in Brazil for nationals and refugees alike.

Recommendation: In coordination with the Ministry of Education, the autonomous public universities and professional associations, facilitate the recognition of educational documentation and diplomas, which would benefit Brazilians and persons in need of international protection alike.

Issue 3: The lack of a comprehensive database for refugees and asylum-seekers hinders the ability of the authorities to fully assess needs and identify protection concerns, especially for persons of concern in the Amazon region that have limited

access to the asylum procedure and remain in a precarious situation lacking access to social services. However, the work of UNHCR in Manaus, together with partners and the security network in the region has proved to be effective in encouraging the Federal Police to speed up the documentation for asylum-seekers in the Northern region.

Recommendation: To facilitate the Brazilian authorities' efforts to provide assistance and services to refugees develop a database that would allow for systematic data analysis based on breakdown of gender, age and nationality, and to keep track of changes in the refugee population (for example by closing the cases of the individuals that passed away and those who naturalized as Brazilian citizens).

Issue 4: CONARE's administrative staff is overwhelmed by their amount of work. Three eligibility officers are responsible for the administrative work, conducting interviews with asylum-seekers throughout the country and provide advice to CONARE members on the eligibility of applicants for refugee status. Additionally, only one person acts as focal point for statistical reports. Due to the amount of work, lack of budget and the enormous size of the national territory, CONARE staff often conducts interviews with asylum-seekers living in distant areas by telephone. These interviews are usually not sufficiently detailed and asylum-seekers are not given the orientation they would otherwise receive.

Recommendations: To reinforce an already well-functioning national refugee status determination procedure, increase the human resources of CONARE to allow for adequate processing of the growing number of asylum applications and for increased activities to promote the integration of refugees. Ensure that all asylum-seekers are given the opportunity of a personal interview to provide sufficient guarantees to asylum-seekers and enhance the quality of the refugee status determination procedures. In the event of a denial of recognition of refugee status, the respective asylum-seeker should be informed about the reasoning for the rejection to enable him/her to effectively appeal against the negative decision.

Issue 5: More efforts are needed to facilitate the local integration of refugees, including those being resettled to Brazil from first countries of asylum and ensure that their specific protection needs are effectively addressed. The respective activities in this field are still largely carried out and financed by UNHCR and its implementing partners and address the most vulnerable populations.

Recommendation: UNHCR advocates for the Government to take on the resettlement programme and to continue in its efforts to facilitate the local integration of refugees building on the good practices developed in the past years.

Issue 6: Refugees do not have equal access to some social and public services, particularly in the case of housing programmes and pensions. For example, access to adequate housing is limited due to the high costs and documentation requirements; some public services can only be accessed by foreigners that have permanent status or have been naturalized (examples of this include the federal assistance to elderly and disabled persons, and the "Minha Casa Minha Vida" public policy that facilitates the credit to purchase houses).

Recommendation: While the legal framework in Brazil provides for equal access to social and public services to nationals and refugees alike, some social services require foreigners, including refugees, to have a permanent status or be naturalized in order to be enjoyed. Provide exemptions for refugees to these requirements would be recognition of the particular vulnerability of refugees and would built on an already inclusive policy implemented by the Government of Brazil.

**Human Rights Liaison Unit
Division of International Protection
UNHCR
May 2012**