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The Brazilian Government in Coping With the Venezuelan Migratory Flow and the Need to (re) Think About Public Policies of Migration: a Human Rights Perspective Analysis

O GOVERNO BRASILEIRO NO ENFRENTAMENTO DO FLUXO MIGRATÓRIO DA VENEZUELA E A NECESSIDADE DE (RE) PENSAR EM POLÍTICAS PÚBLICAS DE MIGRAÇÃO: UMA ANÁLISE EM PERSPECTIVA DE DIREITOS HUMANOS

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ABSTRACT

The Venezuelan migratory flow is the result of their national cyclical and conjunctural crisis. From the moment that this massive displacement is identified as an emergency humanitarian crisis, it requires effective and urgent responses and strategies aligned with the human rights protection standards as guidelines ruling the actors involved in the resettlement process of these forced migrants. In the context of the Venezuelan migratory crisis, Brazil is one of the flow recipients, which represents an exceptional panorama for the country in the sense of government responses. This article assesses the main aspects and requirements of the Venezuelan diaspora while analyzing whether the *Acolhida* Operation launched as one of the strategies used by the Brazilian Federal Government to deal with this phenomenon, observes the protection legislation for migrants and refugees, and effectiveness is achieved throughout the national territory, constituting an adequate solution to the intended demand. As a method, a bibliographic review was adopted, with an exploratory nature, documentary technique, and interpretation of official data on migratory matters, in addition to international and national normative analysis relevant to the theme.

Keywords: Migration Crisis; Venezuelans; Reception; Public policy; Brazil.

RESUMO

O fluxo migratório venezuelano é resultado de crise cíclica e conjuntural nacional. A partir do momento em que este deslocamento massivo é identificado como uma crise humanitária emergencial, requer respostas efetivas e urgentes, bem como estratégias alinhadas com as normas de proteção dos direitos humanos como diretrizes que regem os atores envolvidos no processo de reassentamento desses migrantes forçados. No contexto da crise migratória venezuelana, o Brasil é um dos destinatários do fluxo, o que representa um panorama excepcional para o país no sentido de respostas governamentais. Este artigo avalia os principais aspectos e necessidades da diáspora venezuelana ao analisar se a operação acolhida e lançada como uma das estratégias utilizadas pelo governo federal brasileiro para lidar com este fenômeno observa a legislação de proteção para migrantes e refugiados. A sua eficácia é avaliada no alcance ao longo território nacional, dado que pretende se constituir como uma solução adequada à demanda pretendida. Como método, adotou-se a revisão bibliográfica, de caráter exploratório, técnica documental e interpretação de dados oficiais sobre questões migratórias, além de análises normativas internacionais e nacionais pertinentes ao tema.

Palavras-chave: Crise Migratória; Venezuelanos; Recepção; Políticas Públicas; Brasil.

1 INTRODUCTION

The act of displacement is inherent to man's tradition in his search for spaces to survive and live. In the early days of humanity, the factors that prompted the changes were mainly due to nature, that is, due to climatic and geographic issues, which could or could not favor agriculture. In old age, these movements started to take on new shapes, clearly due to the interactions established by man. Soon the locomotion of the peoples started to accompany the colonization process, either spontaneously or forcibly.

In the same sense, the Middle Ages

reinforces the not always organic character of man's search for new spaces to

reestablish themselves when they cease to be welcome in their land.

In the modern age, we again have the colonization process as one of the significant factors. However, this assumes a peculiarity because they are transoceanic displacements.

Finally, in contemporary times, political conflicts and outbreaks of war mark a new aspect in the migration process when social, economic, and cultural states are

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devastated. From here, it is understood that migrating is an action that descends from multiple factors, which encompasses elements gathered from all its evolutionary phases and adds some more recent ones, demonstrating that in addition to having several dimensions, it is also a reality that can be unpredictable, which will accompany the speed of the changes brought about by globalization, therefore complex.

Among other circumstances, they migrate searching for fundamental rights such as freedom of expression, to escape wars, hunger, and repression, simply for living a dignified life.

The crisis of migrants and refugees must be taken, globally, as a matter of collective confrontation, understanding that its dimensions are comprehensive and that the current context does not indicate a reduction in the numbers of migrants (*lato-sensu*), but its increase, which in many states it can create a situation of chaos because of unpreparedness.

The issue of migrants and refugees is increasingly present in the international dialogue; proof of this is the UN's recent decision to approve yet another resolution on the subject.

On November 15, 2019, at the Third Committee of the General Assembly of the United Nations (UN) at the plenary meeting, the UN adopted Mexico's *Protéccion de Migrantes* resolution, aiming to combat discrimination, xenophobia, and intolerance to people outside its country of origin. It encompasses migrants who leave their countries not only for reasons of persecution but also for situations of environmental catastrophes, even if they were outside the original concept of refugee¹.

In 2018, the migratory phenomenon reached around 258 million people worldwide, which corresponds to 3.4% of the world population, according to data released by the United Nations (UN)². The total number of displaced persons being 70 8 million, according to the UNHCR report — "Global Trends-Forced Displacement" (Global Trends-Forced Displacement), which analyzes statistical trends in the changes produced by forced human displacement annually.

¹ That concept brought by the 1951 Geneva Convention, a concept that restricted the concept of refugee to a specific time and space.

² Migrants now number 258 million people worldwide, the UN points out. Available at <http://agenciabrasil.etc.com.br/internacional/noticia/2017-12/migrantes-ja-somam-258-milhoes-de-pessoas-em-todo-o-mundo-pointing-onu>> Access in July 24, 2018.

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More than 5 million people have emigrated from Venezuela, and this exodus is considered the largest in recent history in Latin America, and, worldwide, it is considered by the United Nations High Commissioner for Refugees — UNHCR, the second-largest refugee crisis. They are being surpassed only by Syria.

Brazil has experienced since 2015 an increase in the entry of migrants and the number of asylum and asylum applications, mainly after the crisis that broke out in Venezuela.

According to data available on the homepage of the R4V Platform, Brazil is the sixth most prominent host of displaced Venezuelans, who access the country mainly through the dry border that links Venezuela to the northern region of Brazil. According to the platform, until December 2019, there were 264,617 Venezuelans in the national territory.

The fact is that the migration issue should be included in the Brazilian Government's discussion agenda, at all levels, as a priority, since it is a displacement of expressive numbers and a flow of peculiar characteristics, it requires to be differentiated, sensitive treatment and that corresponds to the legislation protective of this collective. Simultaneously, the

dealings must be agile because this scene's subjects are people in conditions of vulnerability and hypo sufficiency, which makes them potential targets for exploitation for various illicit acts.

The numbers reveal aspects of the Venezuelan crisis, and Brazil, as one of the destinations of the nationals of that country, must think about the new challenges that unfold as "[...] job opportunities of the strengths and review of institutional weaknesses, leaving to Brazil to assume the role of regional interlocution in the process of transition to a democratic regime." (CAMILO, CHAI, et al., 2019, p. 7)³.

Taking on the role concerns, for example, the correct application of the rules guaranteeing refugees' rights who arrive, transit, and remain in Brazil, under guidelines to be followed and international commitments to be respected.

Given the massive arrival of a mixed migratory flow of Venezuelans (migrants, asylum seekers, asylum seekers, and indigenous people), it is necessary to (re) discuss actions and adapt internal practices

³ CAMILO, CHAI, et al. Crisis of immigrants from Venezuela: reflections on the regional situation, its consequences and new challenges for Security and National Defense. Brazilian Navy Naval Warfare School. Higher Defense Course. Organized by AE-II. Year 2019. P. 1-9.

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to align with the protective normative set of the migrant person. Migration public policies must observe international treaties

ratified on migratory matters, in the 1988 Constitution, the Brazilian refugee law, the 2017 migration law that replaced the outdated Foreigner Statute, and other humanitarian protection recommendations. That is why it is necessary to look at the problems arising from this Brazilian migratory situation, think about the challenges, and discuss whether the Welcomed Operation, adopted as a national migratory public policy, is sufficient to meet such problems and, if not, what can be improved, especially in the programmatic axis called "interiorization," therefore, these are the objectives of this research.

More than two thousand Venezuelan migrants and refugees are out of shelters. When there is a national policy of interiorization that aims just the opposite, considering this as premises, it is considered: a) that the interiorization activities of *Acolhida* Operation has found obstacle in the face of local domestic politics that often see migrants as foreigners and not subject to the rights enjoyed by "nationals"; b) the disparity between the number of Venezuelans received in each Brazilian State suggests that there are some reasons for this, such as

the prospects for employment in the destination (which may be justified when considering São Paulo as interning more than two thousand Venezuelan migrants and Maranhão and Amapá 5 each); c) not only the perspectives of work and quality of life, but it is also considered a relevant factor to justify the choice of one State in detriment of another to the local reception in these federative entities.

The discussion is even more pertinent because the world has experienced a record each year in the number of people who migrate, being the most delicate situation when individuals are forced to leave their countries of origin for various reasons. Forced displacement alien to their will as those resulting from environmental disaster, armed conflicts, political persecution, or cases in which the state democratic order was broken, as in Venezuela, which resulted in the real migration crisis that is currently being seen.⁴

Through the research method used, data, reports, and information made available by the Civil House, Ministry of Defense and the Federal Police, UNHCR, HRW (Human Rights Watch), and IOM (International Organization for Migration)

⁴ For UNHCR, 70.8 million people were displaced worldwide, as can be seen at: <https://nacoesunidas.org/numero-de-pessoas-deslocadas-no-mundo-chega-a-708-milhoes-says-UNHCR/>. Accessed 15 Aug. 2020.

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are used, as well as the study of national and international laws and normative texts that deal with the theme of this work: the Brazilian Refugee Law (Law 9.474 / 1997), the Migration Law (Law no. 13.445 / 2017), Decree 9.199 / 2017 and Interministerial Ordinance 9/2018, which succeeded Normative Resolution CNIg 126/2017, the United Nations Convention on the Status of Refugees (1951 Convention) and the 1967 Protocol.

The reasons given justify this investigation, which is supported, nationally and internationally, for the constitutional mandate to make every human person worthy of the rights inherent to them, regardless of nationality.

One of the focuses of this research is to verify the strategies used by the Brazilian Government in welcoming Venezuelan immigrants according to the legal pillars mentioned.

For this reason, a cut-out is necessary for a better appreciation of the theme. Therefore, the justifications for choosing the State of Maranhão are a) absence of the State from the official list of states that have made themselves available to receive Venezuelan immigrants; b) lack of public migration policies; c) manifest presence of indigenous Warao families on the streets of the capital São Luís and d) geographic

proximity to the State of Maranhão, located in northeastern Brazil, to the North, a region that has received the massive displacement of Venezuelans.

2 BRAZILIAN CHALLENGES IN FACING VENEZUELAN MIGRATORY FLOW

It costs a country not to look at the migratory issue from the point of view of national security. Therefore, the first reaction of a State that receives a migratory flow is pertinent to the regularization of the newly arrived collective.

Initially, Venezuelans' arrival raises the issue of regularization as a first challenge, in addition to urgent needs for food and health.

The regularization of Venezuelan migrants in Brazil is carried out through granting refuge or temporary residence. The refuge is granted based on the Brazilian Refugee Law (Law No. 9,474 / 1997), while the Immigration Law regulates the temporary residence (Law No. 13,445 / 2017), by CNIg Normative Resolution 126 / 2017, and Interministerial Ordinance No. 2, of 15/05/2019, which amended Interministerial Ordinance 9/2018.

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UNHCR, which has active participation in the National Committee for Refugees (CONARE), acknowledged that this was an essential step towards protecting Venezuelan citizens, as it is a decision that allows the adoption of a simplified procedure in the process of determining refugee status.

The progress made with this admission is in the fact that, unlike the temporary residence permit, the asylum application is free and grants the applicant protection by the Brazilian State while the application is in progress, such as the suspension of extradition proceedings, based on the principle of nonrefoulement, that is, the prohibition on returning the asylum seeker to the country where he is at risk.

With the common forms of entry into Brazil presented, let us move on to the later challenges. Right from the start, there was difficulty in controlling flow on the border between the city of Santa Elena de Uairén (Venezuela) and Pacaraima (Brazil). It is estimated that 500 Venezuelans cross the border every day and do not return to their country of origin. The direct access of Venezuelans to Brazil is through the city of Pacaraima, in the State of Roraima, which concentrates most of the immigrants. Due to the intense daily flow, social chaos is created that seems

inevitable, therefore the immediate need for an organizational system to manage the flow. At this point, Brazil created an emergency assistance plan called Operation Welcoming. It is intended, among other provisions, to reduce the initial tension suffered by the State of Roraima so that the flow of immigrants is distributed to other entities of the federation. Through this Operation, we seek to act on three axes: a) ordering the border, b) reception of immigrants, and c) interiorization. These three axes are challenges, mainly concerning interiorization, while considering the 26 Brazilian Federative States, there is a large concentration of Venezuelan migrants in some states harming others. For example, while Manaus received 4,681 Venezuelans, São Paulo 2,562, Curitiba 2,383, Dourados 2,160, Porto Alegre 1,445, states like Maranhão, Amapá, Tocantins, Piauí and Acre received, respectively, 5, 5, 7, 15 and 40 Venezuelan citizens.⁵

The Federal Subcommittee for Interiorization thus demonstrated the states that received the most Venezuelans in the process of interiorization, with Manaus, São Paulo, Curitiba, Mato Grosso do Sul (Dourados) and Porto Alegre standing out

⁵ Second map of Distribution of Venezuelan migrants by Brazilian states, disponibilizado pelo Subcomitê Federal de Interiorização, IOM, ONU, R4V, 2020.

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as major hosts, while Maranhão, Amapá, Tocantins and Piauí as entities that least Venezuelan migrants out of the total of 39,846 interned beneficiaries since April 2018. These are data from July 2020.

Considering the estimate that about 2,375 Venezuelan refugees and migrants are homeless in Boa Vista (RR) who are seen sleeping in open public spaces such as streets and bus stations, it is questioned for what reasons states with Maranhão, which receive less than 5% of the total number of internet people, do not manifest themselves or are not on the route of destination of these migrants.⁶

Having overcome the challenges, we proceed to analyze the regulations, which should guide any public migration policies.

3 NATIONAL AND INTERNATIONAL LEGAL FRAMEWORKS IN MIGRATORY AND REFUGE MATTERS

The fundamental rights inscribed and affirmed in the Constitution of a State ensure a series of nationals' rights. However, a question arises: outside the territory in which the person was born, is

⁶ Brazil: Situation of Homeless Venezuelan Refugees and Migrants in Pacaraima July 2020. Available at: <https://r4v.info/es/documents/details/78267>. Access 18 ag. 2020.

there any way that these rights are safeguarded? It appears that, at the international level, yes, these rights can and should be guaranteed.

To understand this issue, it is essential to realize that, at the international level, the legal link that connects countries is international treaties, which will only be applied between States that have expressly consented to their adoption in the free and whole exercise of their sovereignty, that is, the treaties do not create obligations for States that have not consented to them, but only for States Parties that have agreed to it freely. These international treaties act as a policy of good coexistence between States.

In humanitarian matters, Brazil has ratified several diplomas. In the global system, we have the Universal Declaration of Human Rights of 1948, the Declaration of the Right to Development of 1986; Convention on the Status of Refugees of 1951, Protocol on the Status of Refugees of 1966, and The International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights of 1966 (both). On behalf of the inter-American regional system, we find the American Declaration of the Rights and Duties of Man of 1948 and the American Convention on Human Rights of 1969.

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Brazil consolidated in paragraph 2 of article 5 of the Federal Constitution of 1988⁷ that the rights and guarantees expressed in that Constitution would not exclude others arising from the regime and principles adopted by it or from the international treaties to which the Federative Republic of Brazil was a party, to that the doctrine is called the Opening Clause. Such a clause is a way of accessing the rights that result from a process called internationalization of Constitutional Law, through which the Constitution starts to reproduce principiological provisions that give extension to its formal content.⁸

Therefore, it is understood that international treaties for the protection of human rights ratified by the Federative Republic of Brazil have material constitutional status, in addition to an immediate application, and under no circumstances can they be revoked by subsequent ordinary law, hence the authenticity of these treated on national soil and the importance of complying with them.

⁷ In verbis: Art. 5, §2: “The rights and guarantees expressed in this Constitution do not exclude others arising from the regime and principles adopted by it, nor from the international treaties to which the Federative Republic of Brazil is a party”.

⁸ According to SANTANTA, José Cláudio Pavão. Between the Constituent Pact and the social clamor: Procedural rights and guarantees in the constitution. Conference given on 12/08/2010 at the 1st Ibero-American Congress on Human Rights and Advocacy, promotion OAB-MA, São Luís, 2010.

There is no doubt that the migration issue is related to human rights issues. On the subject, Flávia Piovesan (2012, p. 102) explains that the contemporary conception of human rights is characterized by the universalization and internationalization of civil, political, economic, and cultural rights. This construction was introduced by the 1948 Declaration and later reiterated by the Vienna Human Rights Declaration of 1993. This diploma, ratified by 171 countries, endorses the universality and indivisibility of human rights. The international community, therefore, must treat human rights fairly and equitably.

Therefore, issues like these cannot be avoided when discussing immigration policy, either at the local or international headquarters.

The 1951 Convention relating to the Status of Refugees, one of the most critical normative laws regarding the legal protection of refugees, and of which Brazil is a signatory, which was amended by the 1967 Protocol, brings the definition of a refugee as being every person who:

as a result of the events that took place before January 1, 1951, and fearing being persecuted for reasons of race, religion, nationality, social group, or political opinions, she is outside the country of her nationality and that she cannot

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or, because of that fear, he does not want to avail himself of the protection of that country.

It should be noted that, given the recognition of an emergency humanitarian crisis, Brazil, considering about Venezuelans as a severe and widespread violation of human rights, applied not this definition of the 1951 Convention, but the expanded definition of refugee, established by the Declaration 1984 to analyze requests for recognition of the status of Venezuelan refugees.⁹

Internationally, the Universal Declaration of Human Rights, which has the ideal of the freedom man, recognizes all members of the human family's inherent dignity and their equal and inalienable rights as the foundation of freedom, justice, and peace in the world. Expressly declares that it should not be done:

no distinction based on the political, legal, or international condition of the country or territory to which a person belongs, whether it be an independent territory, under the tutelage, without its Government, or subject to any other limitation of sovereignty.

In this pitch, it is imperative to mention the San José Pact of Costa Rica, ratified by Brazil in 1992, which has real influence on the national legal system and sought to consolidate a system of social justice and personal freedom among the countries of America when observance of fundamental human rights.

On 05/24/2017, the New Migration Law was signed in Brazil, replacing the old Foreigner Statute of 1980. The new law treats the migratory movement as a human right, combating xenophobia and discrimination against migrants.

Art. 120 of the aforementioned normative diploma provides that:

The National Policy on Migration, Refugee and Statelessness will have the purpose of coordinating and articulating sectoral actions implemented by the Federal Executive Branch in cooperation with the States, the Federal District, and the Municipalities, with the participation of civil society organizations, international organizations, and entities private, according to regulation. (emphasis added)

⁹ A humanitarian crisis, according to Law 13.684 of 7/21/2018, consists of: "situation of serious or imminent institutional instability, armed conflict, major calamity, environmental disaster or serious and widespread violation of human rights or international humanitarian law that causes a flow disorderly migration towards the region of the national territory."

It was with the 1951 Convention, relating to the Status of Refugees, that, for the first time, a universal instrument of protection of this nature was established. Anyone,

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regardless of their social group or a particular political or social event, could benefit from international protection.

The institutionalization of the refuge in Brazil took place with the enactment of Law 9,474 / 1997 and creation of the National Committee for Refugees (CONARE). The interest in legislating on this issue was based on the principle of nonrefoulement or non-return, which is an imperative rule of international law, and means that, based on this principle, countries that receive refugees are prohibited from expelling them by ordering them—those back to the territory where they were exposed to degrading conditions or persecution.

The refugee statute prescribes in arts. 32 and 33 that this principle can only be disregarded for reasons of public order or national security. Contrary to this principle, the agency Frontex (European Agency for the Management of Operational Cooperation at the External Borders), a body of the European Union that aims to assist the EU countries in the control of borders, today prevents the entry of countless people daily. Boats arriving with refugees to the European coast searching for shelter, punishing this body is a difficult task because there is no figure of the person in charge in just one person since the body integrates and works with

resources from different European Union countries.

For example, Greece has recently been the target of accusations that indicate that until March 2020, more than a thousand refugees and immigrants were abandoned at sea on the coast of the country by the Greek military forces in a clandestine manner, as this is an act that goes against international and European legislation. The Greek Government has stated that the treatment of migrants and refugees fully complies with the relevant international legislation, its protocols, and conventions.¹⁰

At a broad level, it can be seen that in legislative matters, many countries are at an appropriate level. However, migration has given a different perception to visits than what occurs when the doors and windows of a country are closed before the international community. That is, even though the treatment seems to be within the legal framework. With the necessary protections to human rights, traditionally, the organization's level of organization and systematic camouflage coordination that intercepts these flows before the migrants and refugees have a voice, not even reaching the right level—chance of having their requests evaluated within the legal

¹⁰

Check <https://www.nytimes.com/2020/08/14/world/europe/greece-migrants-abandoning-sea.html>.

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system. Brazil, similarly, also has refugee legislation that meets current demand analytically by adopting a broad refugee concept. According to art. 1 of Law No. 9,474, of July 22, 199:

Any individual who:
I - due to well-founded fears of persecution for reasons of race, religion, nationality, social group, or political opinions, he is outside his country of nationality and cannot or does not want to accept the protection of that country;
II - not having nationality and being outside the country where he previously had his habitual residence, he cannot or does not want to return to it due to the circumstances described in the previous item;
III - due to a severe and widespread violation of human rights, he is obliged to leave his nationality to seek refuge in another country.

Moreover, this concept goes beyond what is established in the 1951 Convention when it also identifies as a refugee all people who seek security in the face of severe and widespread violations of human rights; this allows more people to be welcomed.

The enactment of Law 9,474 / 97, in its article 1, item III, enriches the spirit of Cartagena, determining that it will be recognized as a refugee in Brazil from the following formulation: "III - due to a

severe and widespread violation of human rights, he is obliged to leave his country of nationality and seek refuge in another country. "

By including the concept of human rights as an intrinsic part of the concept of eligibility for refugee status, Brazilian law has opened broad horizons to protect people who are victims of forced migration in the world.

According to the United Nations High Commissioner for Refugees (UNHCR) report, at the end of 2016, about 65.6 million people, 1 in 113 people worldwide, were forced to leave their places of origin by different types of conflict. Of these, about 22.5 million are refugees, and 2.8 million are applicants to recognize refugee status. The 3rd Annual Report on Refugees, also carried out by UNHCR, entitled "Refuge in numbers," in the last seven years, Brazil received 126,102 requests to recognize refugees' status, which gives approximately 1500 requests per month. Of the total, 33% (thirty-three percent) come from Venezuelans, and in second place, with 14% (fourteen percent), we have Haitians.

Therefore, there is an urgent need to coordinate a response at the national level that protects and inserts the State as an agent that facilitates this collective

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resettlement. The importance of state participation is essential so that, in a shorter period, the recipient country feels the positive impacts of a migratory flow and not the negative impacts of population pressure in a given region. After all, as law subjects, migrants and refugees need assistance and guarantees, which the indigenous people share. At first, the specific needs of this group must be met to later gain independence from going searching for their reestablishment in the new community on their own, like the other nationals.

In this sense, the first step is to distribute the flow throughout the national territory. After all, demographic growth that is too fast is not organic, so it was not foreseen in state government plans. So, that if distributed, the insertion at the local level will have more chances of success.

The national legal framework ruling the immigration policy: the Federal Decree nº 50.215, of January 28, 1961, which promulgates the Convention on the Status of Refugees, Law nº 13.445 / 2017 - Law of Migration, Law nº 9.474, of July 22,

1997, which defines mechanisms for the implementation of the 1951 Refugee Statute, in addition to Decree No. 9,286, of February 15, 2018, which defines the composition, powers, and operating rules of the Federal Emergency Assistance Committee to welcome people in situations of vulnerability resulting from the migratory flow caused by a humanitarian crisis. In Brazil, the body responsible for formulating the National Immigration Policy, among other competencies, is the National Immigration Council - CNIg, which is regulated by Decree nº 9.873 / 2019 and Decree nº 9.199 / 17 (this regulates the Law on Migration: Law No. 13,445 / 17.

Considering the existence of national legislation dealing with migrants and refugees, we seek to demonstrate what these norms are, in addition to the Migration Law and the Refugee Law, which is why the various ministerial ordinances, decrees, and resolutions that bring procedures will be pointed out, processes, rights, and information about immigrants and refugees (Venezuelans or not) in Brazil, as shown in the table summarized below.

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Table 1. Guidelines for migration and refuge in Brazil:

Legislation	SUBJECT/THEME
Law No. 13,684/2018	It has emergency assistance measures to welcome people in vulnerable situations due to migration flows caused by a humanitarian crisis and make other arrangements.
Ordinance No. 756/1998	Approves the Bylaws of the National Committee for Refugees
Ordinance No. 9/2018	It provides for the granting of a residence permit to immigrants in Brazilian territory. It is a national of a border country, where the Residence Agreement for Nationals of Mercosur States parties and associated countries is not in force to meet national migration policy interests.
Ordinance No. 87/2020	It provides for the granting and procedures of residence permit to a person who has been the victim of human trafficking, slave labor, or violation of the right aggravated by his/her migratory condition.
Decree No. 8,503/2015	Promulgates the Agreement between the Government of the Federative Republic of Brazil and the International Organization for Migration regarding the Legal Position, Privileges, and Immunities of the Organization in Brazil, signed in Brasília April 13, 2010.
Resolutions of the Federal Emergency Assistance Committee:	
Resolution No 10/2019	It establishes the Welcoming System as an official register of immigrants from the migration flow caused by a humanitarian crisis in Venezuela's Bolivarian Republic. This system consists of the official database for internalization in work modalities, family reunification, and social gathering.
Resolution No 9/2019	It provides for the Federal Subcommittee's specific objectives and functioning for the Reception, Identification, and Screening of Immigrants; of the Federal Subcommittee on Reception of Vulnerable Immigrants; of the Federal Subcommittee on Interiorization; and the Federal Subcommittee on Immigrant Health Actions.
Resolution 6/2018	Establishes the Subcommittee for The Reception of Vulnerable Immigrants from Venezuela.
Resolution 4/2018	It establishes the Federal Subcommittee on Health Actions for Immigrants in the State of Roraima due to the migration flow caused by a humanitarian crisis in the Bolivarian Republic of Venezuela.
Resolution 3/2018	It establishes the Federal Subcommittee for the Reception, Identification, and Screening of Immigrants in the State of Roraima, due to the migration flow caused by a humanitarian crisis in the Bolivarian Republic of Venezuela.
Resolution No. 2/2018	It establishes the Federal Subcommittee for the Interiorization of Immigrants in the State of Roraima.
Resolutions of the National Committee for Refugees - Conare	
Normative Resolution No. 18/2014 (Amended by Normative Resolution No. 26/2018 and No. 31/2019)	It establishes the procedures applicable to the application and processing of the asylum application and provides others.

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Normative Resolution No. 22/2015 (Amended by Normative Resolution No. July 24 July 28, 2017).	It adopts the Asylum Application Form and the Appeal Form and amends Conare Normative Resolution No. 18.
Normative Resolution No. 23/2016 (Amended by Normative Resolution No. December 28 December 20, 2018).	Establishes a passport application and travel abroad procedures for refugees and asylum seekers.
Normative Resolution No. 24/2017	It adopts the Refugee Status Recognition Request Form, the Family Identification Form to Extend the effects of the Refugee Condition, and the File for Appeal and amends the wording of Normative Resolution No. 22 of conare.
Normative Resolution No. 27/2018	Article 2 of Law No. 9,474 of July 22, 1997
Normative Resolution No. 29/2019	It establishes the use of Sisconare as a system for processing requests for recognition of the refugee status of Law No. 9,474 of July 22, 1997.
Joint resolutions:	
Joint Resolution No. 1/2018	It provides for granting a residence permit, associated with the labor issue, to the applicant for recognition of refugee status with the National Committee for Refugees (Conare). There is a system called Migrante Web through which the electronic application for residence is made, available at https://portaldeimigracao.mj.gov.br/pt/migranteweb .

It appears, therefore, that there is no lack of guidelines and norms for humanitarian protection, but rather the effective implementation of public migration policies that constitute a response that guarantees the dignified welcome of Venezuelan immigrants. In the field of solidarity and human rights, standards are looked at as a starting point, but these must be combined with assistance actions for immigrants.

4 MIGRATORY PUBLIC POLICIES IN ADDRESSING THE VENEZUELAN MIGRATORY CRISIS

By public policy, it is pertinent to mention the understanding of Maria Paula Dallari Bucci to whom:

Public policy is the governmental action program that results from a set of legally regulated processes - electoral process, planning process, government process, budget

process, the legislative process, administrative process, judicial process - aiming to coordinate the means available to the State and private activities, for the achievement of socially relevant and politically determined objectives. As an ideal type, public policy should aim to achieve defined objectives, express the selection of priorities, reserve the means necessary for its achievement, and the time interval in which results are expected to be achieved. (BUCCI, 2006, p.39)

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Public policies in the field of migration must be understood as a set of measures that governments must develop and implement in the form of strategies and plans that aim to implement the rules and rights provided for regulating migratory protection at local and international levels. Such policies must consider: a) the human dignity, which is one of the foundations of the Federative Republic of Brazil since the promulgation of the 1988 Constitution; b) the objectives of Brazil, whatever they are - the promotion of the good of all, regardless of any forms of discrimination as to color, race, sex, and fixing the prevalence of human rights and c) the self-determination of peoples, cooperation between peoples for the progress of humanity and the granting of asylum as principles that guide the Brazilian international relationship with other countries.

In this regard, it is noted that actions are being taken to welcome Venezuelans, as highlighted below. In terms of national migration policy, the most significant and main initiative of the Brazilian Government, made possible jointly with UNHCR and other UN agencies and civil society organizations, is Operation Welcoming, which operates on three axes: border ordering; reception, and interiorization.

The stage of this strategy that deserves the most points because of the indications of an increase in the flow numbers is interiorization. There are four types of interiorization: a) shelter-shelter, where those that were already installed in shelters in Roraima can be transferred to shelters in other states; b) family reunification, when family members of the interiorization applicant are already installed in other states and declare conditions to receive it; c) social gathering when non-family members with whom the postulant for interiorization has any relationship express an interest in welcoming the migrants where they are established; and d) by the municipality, which occurs according to the voluntary declaration of these entities in receiving Venezuelan migrants and refugees.

The distribution of Venezuelan migrants and refugees among the federal entities occurs voluntarily. This phase started in April 2018, having already interned, until 2019, more than 27,000 Venezuelans.

The reception of Venezuelans depends on the interest of cities in participating in this process. Municipalities that wish to integrate Operation Welcomed at this stage are made demands in terms of reception structure for migrants and refugees. Therefore, the Federal Government created

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an incentive package to assist, in budgetary terms, the realization of this arrangement.

In Maranhão, the municipality of São Luís, capital of the State, although it received a spontaneous flow of Venezuelan indigenous people from the Warao ethnic group, who do not participate in the interiorization stage because it constitutes a very peculiar movement of displacement, did not use the convenience of a spontaneous flow to express interest in receiving more Venezuelan migrants and refugees. Maranhão is not included among the states that receive the most Venezuelans, as seen previously.

While occurring in not so large numbers, distribution will not face any problems if focused on a few states. However, it is predicted that the numbers will increase, and if the strategy gets closer to effectiveness, the numbers of internalization will also increase. Therefore, the more municipalities that integrate the *Acolhida* Operation, the better chances of economic reintegration will have the beneficiaries.

Today, five states hold 70% of the total percentage of interned people, but it is believed that other states have similar conditions to receive a migratory flow and

gain from their benefits.¹¹

Meaningful action to be highlighted concerns the platform R4V - Coordination Platform for Refugees and Migrants from Venezuela. It is the result of a partnership between the UN together with civil society organizations.¹² This platform's main objective is to offer Venezuelans a humanitarian response to the crisis they are going through.

Currently, on the national scene, we have in total Venezuelan migrants, considering the national scenario of Venezuelan / Venezuelan migrants in Brazil, studied by the R4V Platform: A total of 224,102 refugees, refugees and migrants from Venezuela in Brazil, of which 104,858 correspond to the number of asylums claims by Venezuelans in Brazil and the remaining 119,244 relate to the total number of Venezuelans and Venezuelans with temporary or permanent residence visas in Brazil.

At first, these immigrants, for the most part, are entering the country through the State of Roraima, where they receive the first assistance measures. Soon, they are being introduced in other Brazilian

¹¹ Check out <https://r4v.info/es/documents/details/78233>.

¹² This platform can be accessed through the website: <https://r4v.info/es/situations/platform/location/7509>.

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municipalities through the process of interiorization.

On 08/14/2019, Decree No. 9,970, which deals with the Federal Committee for Emergency Assistance, instituted by Law No. 13,684 / 2018, provides for emergency assistance measures for people's reception in situations of vulnerability came into force in Brazil. Migratory flow is caused by a humanitarian crisis and takes other measures.

The Committee aims to welcome people in situations of vulnerability resulting from the migratory flow caused by a humanitarian crisis and consists of a deliberative body; competing with him, among other functions: articulating actions, projects, and activities developed with the support of the Federal State, Capital District and Municipal Governments in the scope of emergency assistance; enter into partnerships with organs of the Executive, Legislative and Judiciary branches; federative entities; civil society organizations; private entities; international experts and bodies.

The Federal Emergency Assistance Committee will have the following Federal Subcommittees: Federal Subcommittee for Reception, Identification and Screening of Immigrants, Federal Subcommittee for Reception of Immigrants Vulnerable

Situations, Federal Subcommittee for Interiorization, and Federal Subcommittee for Immigrant Health Actions.

On 10/10/2019, the UN signed, in partnership with the Federal Government and the National Confederation of Municipalities (CNM), a protocol of intentions that aims to encourage Brazilian municipalities to welcome Venezuelan migrants and refugees to expand assistance with a focus on integrating these people into Brazilian society and economies.

About *Acolhida* Operation instituted in April 2018, it is known that it is an example of government action and involves joint efforts by 16 ministries, state and municipal agencies, Armed Forces, UN system agencies, and non-governmental organizations. , being coordinated by the Civil House of the Presidency of the Republic. As mentioned earlier, part of its tactics is interiorization, which consists of an action that helps Venezuelans have more significant opportunities for socioeconomic insertion in other Brazilian states, thus reducing the pressure suffered by public services in the State of Roraima.

Of the 26 states that makeup Brazil, many, like the State of Maranhão, did not present concrete proposals for adherence to the national plan. Although the Protocol of

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Intent, which aims to increase the number of municipalities to host Venezuelan immigrants, is recent, the *Acolhida* operation itself is not.

Maranhão does not currently have any program, Committee, or body that deals directly with migration issues. According to news published on websites of official entities in Maranhão, the Government of Maranhão, through the State Secretariat for Human Rights and Popular Participation (Sedihpop) and the São Luís City Hall (the capital) through the Municipal Secretariat for Children and Social Assistance (Semcas), reported that humanitarian work is being developed, with the State Secretariat for Social Development (SEDES) and the State Secretariat for Health (SES), which covers reception, food, social assistance, and health.¹³

Sedihpop reported that 156 Venezuelans have already been served on the task force. He asserts that the issue of documentation is dealt with through the Public Defender's Office and that housing, when not paid by Venezuelans themselves, is facilitated by religious institutions that provide temporary shelters.

¹³ Collective, Government and City Hall find issue of Venezuelan refugees in São Luís. Available at: <http://sedihpop.ma.gov.br/2019/07/26/em-coletiva-Governo-e-Prefeitura-situam-questao-dos-refugees-venezuelanos-em-sao-luis/>. Accessed on Nov 10, 2019.

Undoubtedly, the aforementioned "task force" is not in line with national public policy since the Operation received, although emergency, is structured, with clear objectives.

Insists, however, that although there is no formal agreement between the Government of the State of Maranhão, or more specifically, between the Municipality of São Luís that demonstrates the integration of the municipality into the national strategy, the *Acolhida* Operation, it is perceived that the public authorities have designed alternatives and work to tackle the migratory issue.

There was even communication from the local authorities with the IOM to produce a report on the Warao indigenous community that has been installed in the State of Maranhão. The data collected as part of the Displacement Monitoring Matrix (TMD) of the Warao Population carried out by the International Organization for Migration (IOM).¹⁴

It is perceived that there is an interest for the Local Government in the humanitarian reception. However, it is questioned about the risks of decision-making on the migration issue without articulation with the Federal Government since arbitrariness

¹⁴ Available at <https://brazil.iom.int/sites/default/files/Publications/DTM%20Marhães%20-%20Março%202020.pdf>.

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opens room for beneficial decisions, but it can also work against it.

In São Luís there are no specific centers for the reception of immigrants in vulnerable situations, such as those in capitals such as São Paulo, one of the states that most receive Venezuelan immigrants through internalization, according to a report developed by the Casa Civil, whose data point to a total number of residents, by state, until October 2018. This is an even more complex issue for the capital of Maranhão, as it is a route for an influx of indigenous people, characterizing a differentiated demand, which in addition to meeting the needs of a migrant collective, it must respect its habits and culture.¹⁵ Warao migration is an even more complex issue for the capital of Maranhão, as it is a route for a flow, mainly of the indigenous population, characterizing a differentiated demand, which meets the needs of a migrant collective, must respect their habits and culture.

The lack of knowledge and the lack of an interdisciplinary approach to the migratory

flow can generate difficulties in its administration. An example of this is the presence of Warao indigenous people accompanied by street children and begging in São Luís.

According to the Civil House, the shelters in Roraima have a limited number of people, and the number of people in excess should be permanently interned. The reception of Venezuelans in other states, in turn, depends on negotiations with the federated entities that will receive immigrants to make vacancies available. Therefore, if we understand that the assistance provided at the border has an emergency and transitory character, there is no way to talk about the success of the migration policy aimed at Venezuelans without the unassisted flow to other parts of the national territory.

The fact that there are no well-defined rules and operating scheme makes the process bureaucratic and inefficient. It is enough to see that, until September 2019, only 11 of the 26 Brazilian states had internalized Venezuelan immigrants.

Therefore, the risks of an interiorization strategy without well-defined guidelines are related to the sustainability of public services, with consequent failure of the other phases of the Welcomed Operation.

¹⁵ Relatório Trimestral-Operação *Acolhida*¹⁸. Número de imigrantes venezuelanos interiorizados. Available at Casa Civil. Second quarterly report. Federal Emergency Assistance Committee. Available at http://www.casacivil.gov.br/operacao-Acolhida/documentos/20181015_segundo-relatorio-tr-consolidando.pdf. Accessed on Nov 19, 2019.

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5 FINAL REMARKS

The presence of migrants in Brazil, refugees or not, needs attention because, based on constitutional assumptions, they should be given the same treatment that native Brazilian citizens have, in the sense that they should not be deprived of basic needs. If today, Maranhão would have the structure to receive many immigrants well. For UN Secretary-General António Guterres, managing migration is one of the most profound international cooperation challenges today. If it is for countries that deal with this problem daily, there is no doubt that countries like Brazil, whose total number of migrants does not reach 1% of their population, also face difficulties in dealing with migration.

This research investigated how it would be possible to provide migrants' social safeness when in their non-national territory and to enforce human rights, dignity, and respect, preventing them from being deceived and eventually participating in human trafficking rates at the same time.

This investigation seeks to understand whether the *Acolhida* Operation constitutes a national migratory public policy cornerstone in dealing with the mass

migratory flow problem to be regionally adjusted and replicated.

Considering that in the State of Maranhão, more specifically in São Luís, there are no references regarding recent research and data dealing with migration policy, we sought to encourage the implementation of migration policy in our State, which needs to be prepared for situations that require a position urgent when dealing with migration issues.

Knowing that the increasing arrival of migrants to Brazil, and the possibility of entering Maranhão, brings new challenges to our society, we also sought to understand the extent to which our State is prepared to receive international migrants in its territory. It is argued that the structural problems inherent in a state in education, health, public transport, and public security are not a justification to exclude migrants and refugees, who should not be treated differently, with more dignity and more rights.

The Venezuelan migratory crisis caused a situation to be installed for the local Government that requires an immediate and effective response, which allows a dignified and humanitarian welcome by those who cross the border searching for help.

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In the discussed context, the deficit of the cross-border flowing control influences the correct estimate of immigrants and their locations in Brazilian territory. The low effectiveness of the interiorization strategy, aggravated by the increasing demand for shelter vacancy, leads to an increase in homeless people in a vulnerable situation.

On the other hand, there are also difficulties related to public services, which are linked to the overload in other sectors, such as health, education, and the difficulty of entering the labor market. Besides, there is a lack of protection for the interests of immigrant children and adolescents and a lack of protection for the indigenous Warao people, who are the majority in the case of Maranhão.

Finally, insufficient operationalization of the actions necessary to implement the interiorization policy, which results in fewer opportunities for socioeconomic insertion for Venezuelan immigrants and increasing pressure on public services in Roraima.

REFERENCES

ALTO COMISSARIADO DAS NAÇÕES UNIDAS PARA OS REFUGIADOS (ACNUR). *ACNUR Tendencias Globales Desplazamiento Forzado em 2019*. Brasil, 2010. Disponível em: <https://www.acnur.org/5eeaf5664.pdf>.

ALTO COMISSARIADO DAS NAÇÕES UNIDAS PARA OS REFUGIADOS (ACNUR). Cartilha para Solicitantes de Refúgio no Brasil: Procedimentos, Decisão dos Casos, Direitos e Deveres, Informações e Contatos Úteis. 2015. Disponível em: http://www.acnur.org/portugues/wp-content/uploads/2018/02/Cartilha-para-Solicitantes-de-Refugio-no-Brasil_ACNUR-2015.pdf. Acesso em: 17 jun. 2018.

BARRETO, Luiz Paulo Teles Ferreira; LEÃO, Renato Zerbini. FORCED MIGRATION. O Brasil e o espírito da Declaração de Cartagena. Ed. 35, julho de 2010.

BRASIL, República Federativa do. Constituição Da República Federativa Do Brasil. Brasília: Senado Federal, 1988

BRASIL, República Federativa do. Decreto nº. 678/92. Promulga a Convenção Interamericana sobre Direitos Humanos de 22 de novembro de 1969. Brasília: Presidência da República, 1992.

BRASIL, República Federativa do. Lei 9.474/1997. Define mecanismos para a implementação do Estatuto dos Refugiados de 1951, e determina outras providências.

BRASIL, República Federativa do. LEI 13.455/2017. Lei de Migração.

BRASIL. Casa Civil. Segundo relatório trimestral. Comitê Federal de Assistência Emergencial. Disponível em : http://www.casacivil.gov.br/operacao-Acolhida/documentos/20181015_segundo-relatorio-tr-consolidando.pdf. Acesso em 19 nov 2019.

BRASIL, República Federativa do. Decreto nº 9.199, de 20 de novembro de 2017. Regulamenta a Lei nº 13.445, de 24 de maio de 2017, que institui a Lei de Migração. Brasília: Palácio do Planalto, 2017. Disponível em: http://www.planalto.gov.br/ccivil_03/_ato2

Vulnerabilidades sociais convocam políticas públicas

015-2018/2017/Decreto/D9199.htm.

BRASIL, República Federativa do. Lei 9.474/97. Lei de Refúgio. Define mecanismos para a implementação do Estatuto dos Refugiados de 1951, e determina outras providências. Brasília: Presidência da República, 1997. Disponível em: http://www.planalto.gov.br/ccivil_03/LEIS/L9474.htm.

BUCCI, Maria Paula Dallari (org.). Políticas Públicas: reflexões sobre o conceito jurídico São Paulo: Saraiva, 2006.

COORDINATION PLATAFORM FOR REFUGGES AND MIGRANTS FROM VENEZUELA. R4V. [online]. Venezuelanos no Brasil: integração no mercado de trabalho e acesso à rede de proteção social. Disponível em: <https://r4v.info/es/documents/details/78233>. Acesso em 19 ago. 2020.

COORDINATION PLATAFORM FOR REFUGGES AND MIGRANTS FROM VENEZUELA. R4V. [online]. Deslocamentos assistidos de venezuelanos. Disponível em: <https://r4v.info/es/documents/details/78266>. Acesso em 19 ago. 2020.

COORDINATION PLATAFORM FOR REFUGGES AND MIGRANTS FROM VENEZUELA. R4V. [online]. Situação dos Refugiados e Migrantes Venezuelanos Desabrigados em Pacaraima Julho 2020. Disponível em: <https://r4v.info/es/documents/details/78267>. Acesso 18 ag. 2020

ORGANIZAÇÃO DOS ESTADOS AMERICANOS. PACTO DE SAN JOSÉ DE COSTA RICA. San José: Organização dos Estados Americanos, 1969.

PIOVESAN, Flávia. Temas de direitos – 5. ed. – São Paulo : Saraiva, 2012.

GEDIEL, José Antônio Peres (organizador), GODOY, Gabriel Gulano

(organizador). Refúgio e Hospitalidade. Curitiba: Kairós Edições, 2016.

MARANHÃO. Secretaria de Direitos Humanos e Participação Popular. Em coletiva, Governo e Prefeitura situam questão dos refugiados venezuelanos em São Luís. Disponível em: <http://sedihpop.ma.gov.br/2019/07/26/em-coletiva-governo-e-prefeitura-situam-questao-dos-refugiados-venezuelanos-em-sao-luis/>. Acesso em 10 nov 2019.

PRESIDÊNCIA DA REPÚBLICA. PLANALTO. Operação *Acolhida*. Governo Federal assina acordos para

ampliar Operação *Acolhida*. Disponível em: <https://www.gov.br/planalto/pt-br/acompanhe-o-planalto/noticias/2019/10/governo-federal-assina-acordos-para-ampliar-operacao-Acolhida>.

R4V - Plataforma de Coordinación para Refugiados y Migrantes de Venezuela, Brasil: N°2 Monitoramento do fluxo migratório venezuelano. Com ênfase em crianças e adolescentes, 7 Junio 2019, disponible en esta dirección: <https://www.refworld.org/es/docid/5d0930314.html> [Accesado el 20 Noviembre 2019]

SANTANTA, José Cláudio Pavão. Entre o Pacto Constituinte e o clamor social: Direitos e garantias processuais na constituição. Conferência ministrada em 12/08/2010 no I Congresso Ibero-Americano de Direitos Humanos e Advocacia, promoção OAB-MA, São Luís, 2010.

Refúgio e Hospitalidade. Organização de José Antônio Peres Gediel e Gabriel Gulano de Godoy- Curitiba: Kairós Edições, 2016.

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