

Venezuelans in Brazil: Challenges of Protection

Written by João Carlos Jarochinski Silva and Liliana Lyra Jubilut

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JOÃO CARLOS JAROCHINSKI SILVA AND LILIANA LYRA JUBILUT, JUL 12 2018

Since 2015, with the deepening of the crisis in Venezuela, and the consequent increase in displacement, with 5000 Venezuelans leaving their homes every day; Brazil has been receiving an unknown number of Venezuelans, with projected numbers reaching between 40,000 and 50,000 of an estimated total of 1.6 million Venezuelans who have fled their country in 2017. Brazil, however, is not the sole destination of Venezuelans fleeing the profound crisis (which includes shortage of basic supplies, sky high inflation, insecurity, anti-democratic actions by the government, and, in some cases, specific political persecution to those opposed to Maduro's regime) in their country. Data places Brazil as the 4th or 5th destination country for displaced Venezuelans in the South American region in terms of numbers, behind Colombia (the largest recipient), Peru and Chile; and, depending on the source, with fewer Venezuelans than Argentina. If one considers Latin America, Brazil falls to 7th, behind Mexico and Panama. Nonetheless, Brazil presents an interesting "case study" of the challenges of protection faced by forced displaced Venezuelans. On the one hand, it is possible to see in Brazil's response to their arrival challenges in terms of legal protection, regarding their legal status, and even relating to the recognition of the Venezuelans as forced migrants in general, and, more specifically, as refugees. On the other hand, there are challenges in assuring their necessary protection, i.e. guaranteeing all their rights including human rights and access to them (Jubilut, Apolinário, 2008).

Legal Status and Consequent Challenges of Protection

Brazil's response to the migratory influx, in terms of legal status, has been confusing. On the one hand, there have been few recognitions of refugee status, even though there are over 32,000 pending asylum requests and there is clear ground for recognition. This is so due to the fact that, as mentioned above, there are persons fleeing Venezuela due to an individual well-founded fear of persecution, either based on political opinion or belonging to a social group, and, therefore, they should be protected by the refugee regime as they meet the 1951 Convention on Refugee Status criteria. Moreover, Brazil also adopts the criterion of the Cartagena Declaration on Refugees for the recognition of refugee status, accepting the fleeing from a gross and generalized violation of human rights scenario as a separate ground for recognition in its Refugee Act (Law 9.474/97). Refugee status, thus, should be applied to the Venezuelans seeking protection in Brazil. This seems also to be the recommended view of the United Nations High Commissioner for Refugees (UNHCR), as it has called States to treat Venezuelans as refugees, given that, even if not expressly calling for the recognition of their refugee status, the recommendation is to guarantee to them, for instance, access to safe territories, the protection of *non-refoulement* (i.e. not deport, expel or forcibly remove), residency, and the right to work. However, this has not been the position adopted by the Brazilian government, despite the fact that it has highlighted the Venezuelan crisis in international fora and championed its suspension of organizations, which shows that there are still degrees of discretion in the application of internationally recognized criteria for refugee status.

Notwithstanding the fact that there might be forced displaced Venezuelans that might not qualify for refugee status or that do not want to count with this form of international protection. Thus migration from Venezuela into Brazil should be regarded as, at least, a situation of a mixed migration flow, a complex migration situation in which, refugees and other migrants use the same channels and routes to access safe territories (IOM 2014, p. 63). The lack of recognition of this aspect of the Venezuelan migration highlights the difficulties of the Brazilian government to deal with mixed migration flows, and to guarantee the specific protection in migration provided for in international norms to which it has agreed to, thus not implementing adequate protection in face of particular needs and vulnerabilities (Jarochinski Silva, 2011; and Jarochinski Silva, Bógus, Silva, 2017, p. 15 – 30).

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Brazil has preferred to recognize Venezuelans more broadly as (forced) migrants, and thus subject to the country's internal rules on migration and without the guarantees of protection provided by the refugee regime, such as the above-mentioned protection of *non-refoulement*. The national regime on migration in Brazil has recently gone through a transformation, which meant that the more intense influx of Venezuelans into Brazil has been dealt with by two migration laws. Until November 2017, the regulating law was Law 6.815/80, known as the Aliens Statute, a legal norm adopted during the decades-long dictatorship in Brazil that focused mainly on national security. From November 2017 onwards, the applicable law has become Law 13.445/17, the Migration Law. The new law adopted a new paradigm in the governance of migration in Brazil, having human rights as one of its guidelines and principles (article 3, I).

Nonetheless, in terms of the legal status of Venezuelans little has changed in practice. This is so due to the fact that under Law 6.815/80, the National Council on Immigration (CNIg in Portuguese) has adopted Resolution 126 which allows the regularization of the legal status of Venezuelans in Brazil. This resolution was not specific to Venezuelans, but rather to all nationals of Brazil's bordering countries. However, even though the resolution had a broader scope, Venezuelans made up almost the totality of requests for regularization under it, applying for regular status in massive numbers.

The new human rights logic proclaimed by Law 13.445/17 doesn't seem to have impacted the way Brazil deals with the protection of Venezuelans. The sole modification after the new immigration regime was in place was the dropping of the demand that the immigrant had to have entered Brazil by its land borders (Ibid), brought along by a regulation of the Resolution, namely InterMinisterial Rule 9, which was still written from a perspective that sees immigrants in general as a threat (Jarochinski Silva, 2018). To those that meet the requirements of the specific regulation of this type of stay (i.e. the conditions laid down on InterMinisterial Rule 9) a 2-year authorization of legal stay is granted. Two months before the completion of the 2 years, it is possible to request permanent residency. This guarantees the same rights to the persons that choose this avenue of protection as all other immigrants living regularly in Brazil have. The regulation also allows for working in the country (article 5).

Law 13.445/17 brings the concept of "humanitarian hosting" both as one of its principles (article 3, VI) and as a basis for visas to Brazil (article 14, I, c). This type of visa can be granted to "stateless persons or nationals of any country facing grave situation or imminent institutional stability, armed conflict, calamity of great proportions, environmental disaster or grave violation of human rights or international humanitarian law, or in other hypotheses, as described in its regulation" (article 14, III, para. 3, free translation). However, this form of legal status has not had its practical requirements and processes defined yet, despite the fact that the regulation of the Law already exists (Decree 9.199/17). The practice of "humanitarian hosting" should allow for, besides regular legal stays in the country, a different status (as is the case of refugee status), given that the migrants vulnerability is implicitly recognized in this form of protection. It should also allow for the possibility of non-definitive returns to their country of origin, given that the Venezuelan flow, especially in the border between Brazil and Venezuela, has as one of its characteristics a strong context of remittances, not only of money but also of products, which, many times, are taken by the Venezuelans themselves to their country of origin.

In light of this, and in terms of legal protection, one can say that, even though lacking in regards to the application of the refugee regime, Brazil has found pathways for a broad regularization of Venezuelans, with over 25000 persons counting with forms of legal stay apart from refugee status. This can be seen as positive as it does not increase the vulnerability of the migrants by way of not allowing them regular legal status in the country but it also has negative aspects as little attention is paid to specific needs. This scenario of protection gaps is also seen in terms of the Venezuelans' integration in Brazil.

Integration and Challenges in Integral Protection

A holistic approach to integration demands economic, social, and cultural rights guarantees and of access to said rights. Brazil, however, has not applied this approach to Venezuelan migrants. On the one hand, there has been a strong focus on the regularization of labour relations, i.e. a focus on getting them into the labour market. And on the other, there have been difficulties in their access to basic rights.

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Venezuelans have been through the northern border of Brazil, located in the Legal Amazon, a region with low demographic density, poor quality in public services, and difficulties in connections with the rest of Brazil's territory, given that, besides the long distances to the more populated areas of the country, there are few and expensive transport options (Jarochinski Silva, 2017). With the majority of Venezuelans staying in the Legal Amazon, and concentrated in the state of Roraima (with the latest data pointing to 25000), their case has become one of "scape goats" in the regional level. State and municipal authorities have blamed the Venezuelans for the "collapse" of public services in their areas, in clear attempts to avoid any responsibilities. Besides, they have argued, though not explicitly, that Venezuelans are not entitled to access the services that guarantee basic rights, in spite of the Brazilian Constitution guaranteeing universal access to health and to basic education, and the Brazilian legislation determines States and Cities competencies in the area of economic, social, and cultural rights.

These types of discourses have led to, on the one hand, the appearance of xenophobic actions (such as attacks to the shelters and houses where Venezuelans were living) as well as the idea of the arrival of immigrants in general as a threat (with news of "invasions" and the inflating of numbers, for instance), and, on the other hand, to requests of actions that fall away from International Law obligations, such as the closing of the borders.

Regional authorities also state that the responsibility for all matters related to refugees and other migrants falls with the federal government, which has limited capacity for direct action and sends funds to States and Cities to take care of these basic rights. The federal government option to assume a more direct action in dealing with the Venezuelans has been through the militarization of the protection and integration actions in its first stages. Notwithstanding the fact that this has led to the removal of some Venezuelans from extreme vulnerability, as for instance, leaving in the streets; it is not an approach founded on human rights and based on a social assistance grounded on the guarantee of rights and of dignity.

The federal government has also adopted a policy of "interiorization" of Venezuelans, which means their government-assisted relocation throughout the Brazilian territory. In this policy, the involved Ministries determine the new destinations by way of negotiations with other governmental authorities (from States and Cities), the destinies are presented to the refugees who chose to be transferred or not. And, even though the UN has supported the initiative, it is relevant to note that there is a gap in the participation of the civil society and of the business sector, which are fundamental and instrumental for the integration in the new destination and for the formal insertion in the labour market. So far, the interiorization process has led Venezuelans from Boa Vista (Roraima) to São Paulo (São Paulo), Cuiabá (MT), Manaus (Amazonas), Igarassu (Pernambuco), Conde (Paraíba) e Rio de Janeiro (Rio de Janeiro). It remains to be seen whether the interiorization will allow for better access to services and rights for the Venezuelans.

Conclusion

Brazil has undertaken several actions in relation to the Venezuelan displacement into its territory, however it should be pointed out that there is still the need for more to be done as well as for the improvement of actions and policies. Better legal protection and access to rights (i.e. integral protection) are needed. Most of the actions and policies seem to be reactive, i.e. to happen after the influx of the Venezuelans, as it has been in the past with both refugees and other migrants, which leads to hasty undertakings or the need for emergency actions. Brazil should keep in mind that the increase of forced displacement is a world phenomenon, that has been happening at least for the last 10 years and even more acutely in the last 5 years (UNHCR 2018, p. 4) and that tends to continue to augment in the future, as a way to increase its preparedness to deal with possible (and probable) influxes of refugees and other migrants. In the meantime, Brazil should look into its main international commitments and national values and constitutional pillars to find ways to better protect the Venezuelans that have come to its territory in seek of international protection.

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