



RECEPTION OF CHILDREN  
ON THE MOVE  
IN BRAZIL

Prepared by Mattos Filho

*Edited by Lisa Robinson*

March 2018

## TABLE OF CONTENTS

1.	Application of international law in domestic law of Brazil .....	9
1.1.	Status of international treaties in Brazilian domestic law .....	9
1.2.	Ratified international treaties: .....	10
1.3.	How is the principle of “best interest of the child” interpreted in domestic law? .....	10
1.4.	Separated and unaccompanied children: .....	12
2.	Reception of children in Brazil .....	12
2.1.	Initial evaluation .....	12
2.2.	Establishment of identity /Age assessment .....	14
2.3.	Migrant children victims of trafficking.....	15
2.4.	Application for international protection.....	20
2.5.	Migrant children’s access to justice .....	22
3.	Child protection system.....	24
3.1.	Guardianship system .....	24
3.2.	Appointment of guardians for migrant children .....	26
3.3.	Other categories of persons /organs that may carry out guardianship functions .....	27
3.4.	Responsibilities and duties of guardians for migrant children.....	27
3.5.	Profile of guardians .....	28
3.6.	Child Bride .....	30
4.	Family reunification .....	34
4.1.	Family tracing: .....	34
4.2.	Reunification in Brazil or resettlement .....	35
4.3.	Reunification with other relatives .....	36
4.4.	Grounds for refusal .....	36
5.	Placement of migrant children .....	37
5.1.	Temporary shelter/1 <sup>st</sup> reception center.....	37
5.2.	Placement of migrant children .....	40
5.3.	Detention/Retention .....	43
6.	Access to fundamental rights .....	47
6.1.	Education .....	47
6.2.	Health care .....	52
7.	Expulsion.....	55
7.1.	Exclusion clauses .....	55
7.2.	Internal relocation/expulsion to country of origin .....	56
7.3.	Resettlement to a third country .....	56
8.	Data Collection.....	58

8.1.	Data regarding migrant children on the move collected by the public authorities: ....	58
8.2.	Data protection: Is confidentiality of data regarding children secured? .....	58
9.	International relations .....	59
9.1.	Foreign aid that addresses root causes of migration of minors (in particular of unaccompanied minors) in countries of origin and transit countries.....	59
9.2.	Cooperation with civil society .....	60
9.3.	Visa policies.....	61

## Introduction

Brazil has a history of large migratory flows. After a long period of slavery, a practice that began in the 16<sup>th</sup> century and was abolished at the end of the 19<sup>th</sup> century, the migratory flows of the 19<sup>th</sup> and early 20<sup>th</sup> centuries consisted mainly of European immigrants. These immigrants substituted the work force of the slaves, and triggered the occupation of other territories within Brazil.<sup>1</sup>

At the beginning of the 21<sup>st</sup> century, the presence of foreigners from both developed and developing countries had grown, especially from Latin America.

In recent years, the increasing visibility of Brazil abroad, combined with the growing immigration restrictions in Europe and the United States, led to a number of foreign groups choosing to live in Brazil. Additionally, Brazil attracted immigrants from neighboring countries who were fleeing economic crises and political conflicts. Some issues have arisen out of the current migratory flow. For example, arrival of immigrants from the southern hemisphere, such as from Haiti, Bolivia, Senegal, and Democratic Republic of the Congo has meant an influx of immigrants who with little professional qualification and/or a lack of documentary evidence of qualifications. A concern aggravated by language difficulties.<sup>2</sup>

A significant increase in the arrival of refugees from countries in situations of conflict has also been observed. Such refugees are usually engaged in precarious work, and are subject to the prejudice of a society with a strong slave heritage.<sup>3</sup>

According to data from the Ministry of Justice and Public Security in Brazil<sup>4</sup>, 9,552 (nine thousand, five hundred and fifty two) people, from 82 (eighty-two) different nationalities, have already been recognized as refugees. Of these, 713 (seven hundred and thirteen) arrived in Brazil through resettlements, and 317 (three hundred and seventeen) benefited from the extended effects of refugee status granted to a family member.

The crisis in Syria had repercussions in Brazil. Since the beginning of the conflict, 3,772 (three thousand, seven hundred and seventy two) nationals of that country have requested refuge in Brazil. In 2016, there was an increase in the request for refuge by Venezuelan citizens. Over that year, 3,375 (three thousand, three hundred and seventy five) Venezuelans requested refuge in Brazil, representing approximately 33% (thirty-three per cent) of the requests registered in the country for that period.

The countries with the largest number of refugee applicants in Brazil in 2016 were Venezuela (3,375 [three thousand, three hundred and seventy five]); Cuba (1,370 [one thousand, three hundred and seventy]); Angola (1,353 [one thousand, three hundred and fifty three]); Haiti (646 [six hundred and forty six]); and Syria (391 [three hundred and ninety one]).<sup>5</sup>

---

<sup>1</sup> BÓGUS, Lucia Maria M.; FABIANO, Maria Lucia Alves. O Brasil como destino das migrações internacionais recentes: novas relações, possibilidades e desafios. *Revista de Ciências Sociais*, São Paulo, n. 18, 2016. Available at: <https://revistas.pucsp.br/index.php/pontoevirgula/article/view/29806>. Last access on: August 28, 2017.

<sup>2</sup> BÓGUS, Lucia Maria M.; FABIANO, Maria Lucia Alves. O Brasil como destino das migrações internacionais recentes: novas relações, possibilidades e desafios. *Revista de Ciências Sociais*, São Paulo, n. 18, 2016. Available at: <https://revistas.pucsp.br/index.php/pontoevirgula/article/view/29806>. Last access on: August 28, 2017.

<sup>3</sup> BÓGUS, Lucia Maria M.; FABIANO, Maria Lucia Alves. O Brasil como destino das migrações internacionais recentes: novas relações, possibilidades e desafios. *Revista de Ciências Sociais*, São Paulo, n. 18, 2016. Available at: <https://revistas.pucsp.br/index.php/pontoevirgula/article/view/29806>. Last access on: August 28, 2017.

<sup>4</sup> CONARE. Ministério da Justiça do Brasil. *Sistema de refúgio brasileiro: desafios e perspectivas*. Available at: [http://www.acnur.org/t3/fileadmin/Documentos/portugues/Estatisticas/Sistema\\_de\\_Refugio\\_brasileiro\\_-\\_Refugio\\_em\\_numeros\\_-\\_05\\_05\\_2016.pdf](http://www.acnur.org/t3/fileadmin/Documentos/portugues/Estatisticas/Sistema_de_Refugio_brasileiro_-_Refugio_em_numeros_-_05_05_2016.pdf). Last access on: August 28, 2017.

<sup>5</sup> CONARE. Ministério da Justiça do Brasil. *Sistema de refúgio brasileiro: desafios e perspectivas*. Available at: [http://www.acnur.org/t3/fileadmin/Documentos/portugues/Estatisticas/Sistema\\_de\\_Refugio\\_brasileiro\\_-\\_Refugio\\_em\\_numeros\\_-\\_05\\_05\\_2016.pdf](http://www.acnur.org/t3/fileadmin/Documentos/portugues/Estatisticas/Sistema_de_Refugio_brasileiro_-_Refugio_em_numeros_-_05_05_2016.pdf). Last access on: August 28, 2017.

From a legal perspective, Brazil has a comprehensive legal and regulatory framework in relation to both immigration and refugee's matters. Recently, Law No. 13,445/2017, 'the New Migration Law', has been approved. This law guarantees to migrants, on a basis of equality with nationals, the inviolability of the rights to life, freedom, equality, security and property. It also establishes a temporary humanitarian assistance visa, which, among other possibilities, may be granted to stateless individuals or to nationals of a country experiencing a situation of serious and widespread human rights violations – a situation that enables the recognition of refugee status. Law No. 13,445/2017 was approved in May 2017 and became effective in November 2017.

Brazil is a signatory to the Convention relating to the Status of Refugees, which was duly ratified and enacted by Decree No. 50,215/1961<sup>6</sup>. In 1972, Brazil also accepted its protocol. Additionally, Brazil has ratified the International Convention for the Suppression of the Traffic in Women and Children (1950)<sup>7</sup> and, locally, has executed the Agreement concerning the Illicit Trafficking of Migrants between States of Mercosur, Bolivia and Chile - in December 2004 and amended in 2007<sup>8</sup>. Most of the above treaties were ratified by Brazil with no relevant reservations related to children and adolescents.

Additionally, although the country has comprehensive legislation on refuge and migration, the state's institutional mechanisms for dealing with such issues remain under development, with no consolidated public policies in this regard.

Public authorities, the judiciary, and civil society in general are often unaware of the rules related to immigration, refuge and international trafficking of people. The implementation of relevant policies depends largely on the performance of civil society organizations working specifically in the field.

Since the questionnaire presented by Kids Empowerment seeks to understand not only the legislation related to children on the move in Brazil, but also mechanisms of implementation and related safeguards, we faced certain difficulties during the research. Namely in obtaining information from public authorities, who, in general, proved to not have sufficient data regarding specific situations of migrant and refugee children and adolescents. Further, we observed a lack of consistency in public policies and procedures aimed at the reception of this community, and even a lack of knowledge on this matter.

On the one hand, the legal and institutional framework on migration is still under construction and therefore it is still relatively fragile. On the other, the country has intricate and detailed legislation regarding the rights of children and adolescents as a whole, which benefits not only Brazilian children and adolescents, but also migrant children and adolescents.

Firstly, Brazil has a Federal Constitution considered very advanced in terms of guaranteeing human rights. Created in 1988, after 21 years of dictatorship (1964-1985), the constitutional text lays the foundation for the development of public policies focused on a broad sense of citizenship.

The Statute of the Child and the Adolescent ('ECA'), published in 1992, is one of the main developments arising out of the enactment of the Federal Constitution in 1988. It was a turning point for guaranteeing the rights of children and adolescents in Brazil. This Statute is extensively mentioned throughout the following research. In this regard, this work sought to identify legal

---

<sup>6</sup> UNITED NATIONS TREATY COLLECTION. Chapter V: refugees and stateless persons. Available at: [https://treaties.un.org/Pages/ViewDetailsII.aspx?src=UNTSO&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&clang=en#12](https://treaties.un.org/Pages/ViewDetailsII.aspx?src=UNTSO&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=en#12). Last access on: August 24, 2017.

<sup>7</sup> UNITED NATIONS TREATY COLLECTION. Chapter VII: traffic in persons. Available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=UNTSO&mtdsg\\_no=VII-1&chapter=7&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=UNTSO&mtdsg_no=VII-1&chapter=7&clang=en). Last access on: August 24, 2017.

<sup>8</sup> MERCOSUR. Treaties, protocols and agreements: international treaties, protocols and agreements entered into and between Member-States of MERCOSUL and/or between Member-States of MERCOSUR and associated States. Available at: <http://www.mercosur.int/innovaportal/v/2648/3/innova.front/tratados-protocolos-e-acordos>. Last access on: August 24, 2017.

and institutional mechanisms related to migration and refugees, but is based on the advances provided by the 1988 Constitution and the ECA.

However, legal advances do not always translate into effective guarantee of rights. Brazilian territorial extension, different levels of regional development, as well as economic, social and political inequalities, mean that implementing the rights established in the Constitution and in the ECA present a permanent challenge.

Brazilian social indicators still rank Brazilian children in a position of extreme vulnerability. According to information from the Child and Adolescent Observatory<sup>9</sup> (which compiles databases of various public and private sources on population and the quality of life and well-being of children and adolescents between the ages of zero and eighteen) Brazil has 61,4 million children and adolescents (0-19 years old). Of these, 44% of those aged between zero and 14 years are in poverty, 17% are in extreme poverty, and more than 3,3 million children and adolescents (between 5 and 17 years) are exposed to child labor. Regarding schooling, although the primary education rate is high (96%), only 56% of adolescents in high school are enrolled in the year level that corresponds to their age.

Therefore, it can be assumed that migrant and refugee children, whose vulnerability is already accentuated, are unfortunately subject to the same shortcomings in State actions (or lack thereof). This reality requires proactive and responsible State action to guarantee rights.

We hope that this work will contribute somehow in this direction.

## **Methodological notes**

The gathering of data on immigration and refuge in Brazil is not organized, especially with regard to children and adolescents. Although immigration and refugee policy is the responsibility of federal agencies, Brazil's large territory, combined with great regional inequalities, creates an inability for the procedures or forms of application to be consistent across the country.

Accordingly, it is necessary to highlight that we sought, as far as possible, to obtain information from primary sources: through interviews, e-mail requests and phone calls with authorities and organizations that deal with matters relating to children, adolescents, migration and refuge on a daily basis.

Firstly, the main literature on the subject was reviewed. There is a relatively consolidated field of research on immigration and refugee issues, as well as child and adolescents rights. However, the combination of these two keys of research areas (the survey subject matter) is less prominent in terms of academic research.

In addition to the review of international treaties to which Brazil is a signatory and the means in which such treaties are adopted in Brazilian law, we identified several provisions of the Federal Constitution that deal with the safeguard of human rights.

Further, the provisions contained in Federal Law No. 6,815/1980, which defines the legal situation of migrants in Brazil, and provides the legal background for those who intend to apply for a visa of any kind in the Brazilian territory was reviewed. It is noted that in November 2017 this law was revoked by the enactment of Law No. 13,445/2017, the New Migration Law.

---

<sup>9</sup> ABRINQ FOUNDATION (FUNDAÇÃO ABRINQ). *Child and adolescent observatory*. 2016. Available at: <https://observatoriocrianca.org.br/>. Last access on: September 05, 2017.

Federal Law No. 9,474/1997, which was also part of the research, incorporates the 1951 Geneva Refugee Convention into the national Brazilian law, determining mechanisms for the protection of refugees.

Although none of these laws refer to children specifically, Brazil's ECA outlines the rights of children and adolescents regardless of origin, either foreign or national, as it applies to every person under 18 years-old who is within the Brazilian jurisdiction. The ECA was extensively referenced throughout the research and stands out as one of the most important laws for addressing the questions of Kids Empowerment.

Some decisions of higher courts were reviewed to ascertain case law tendencies.

In addition to the bibliographical review and legislation, it is important to highlight the important contribution made by professionals and human rights defenders who, through personal interviews, kindly contributed to this research. They are mentioned below:

**Graziella Rocha**, active researcher in the development of studies in the defense and promotion of human rights, specialized in slave labor, migrations and refuge. PhD and Master in Social Policy.

**Daniel Chiaretti**, Federal Judge (Until July 2017, he held the position of Federal Public Defender, responsible for coordinating the DPU's strategic role in migration and refuge). Master in Political Philosophy.

**Paulo Roberto Fadigas Cesar**, State Judge. Member of the Coordination of Children and Youth of the Court of Justice of São Paulo. Responsible for the creation of the Sector for Children and Adolescents Refuge Applicants and Foreign Victims of International Trafficking in Persons within the judiciary branch.

Members of the **Brazilian Federal Police** were also contacted by our pro bono team of researchers and gave specific information of the procedures applied on Brazilian borders. Considering the confidential nature of their activity, those professionals asked not to be identified.

In addition, we extend our thanks to **Vinicius Feitosa**, former officer at UNCHR Brazil and **Larissa Leite**, legal coordinator at Caritas Refugee Reference Center, who both made important contributions to this work.

## DEFINITIONS

ACNUR	Alto Comissariado das Nações Unidas para os Refugiados (United Nations High Commission for Refugees – UNHCR)
ADUS	Instituto de Reintegração do Refugiado (Institute for the Reintegration of Refugees)
APAE	Associação de Pais e Amigos do Excepcional (Association of Parents and Friends of the Exceptional Children)
ASBRAD	ASBRAD - Associação Brasileira de Defesa da Mulher da Infância e da Juventude (Brazilian Association for the Defense of Women, Children and Youth)
Brazilian Civil Code	Law No. 10.406/2002 of January 10, 2002
Brazilian Criminal Code	Decree No. 2,848/1940 of December 7, 1940
Brazilian Refugee’s Law	Law No. 9,474/1997 of July 22, 1997
Called	Dependant of a person residing in Brazil that is being called to live in this country with this person
Caller	Person that resides in Brazil and wishes to bring a dependant to live in this country
CASP	Caritas Arquidiocesana de São Paulo (Archdiocesan Caritas of São Paulo)
CER	Centro Especializado em Reabilitação (Specialized Rehabilitation Center)
CMDCA	Conselho Municipal dos Direitos da Criança e do Adolescente: a body of the São Paulo municipality responsible for proposing, deliberating and monitoring public policies for children and adolescents (Municipal Council for the Rights of Children and Adolescents)
CNAS	Conselho Nacional de Assistência Social (National Council of Social Assistance)
CONANDA	Conselho Nacional dos Direitos da Criança e do Adolescente (National Council for the Rights of the Child and Adolescent)
CONARE	Comitê Nacional para os Refugiados (National Refugee’s Committee)
CNIg	National Immigration Council. A body of the Brazilian Ministry of Labour and Employment, created by Law No. 6,815/1980 (Conselho Nacional de Imigração – CNIg)
Consultative Opinion OC 21/14	Enacted by the Inter-American Court of Human Rights on August 19, 2014.
Court of Infancy and Youth	A court that is specialized in matters regarding children and adolescent’s rights, created in accordance with article 78 of ECA
CRAI	Centro de Referência e Atendimento para Imigrantes (Center for Reference and Acceptance of Immigrants and Refugees)
DPU	Defensoria Pública da União (Federal Public Defender’s Office)
ECA	Estatuto da Criança e do Adolescente (Statute of the Child and Adolescent)
Federal Constitution	Brazilian Federal Constitution of October 5, 1988
Fundação-CASA	Institution responsible for managing and coordinating the municipalities’ detention and retention centers in the State of São Paulo
Guardianship Council	Autonomous body responsible for ensuring compliance with the rights of the child and adolescent, in accordance with ECA’s



	provisions (Conselho Tutelar)
Guardianship Institutions	Autonomous bodies that house children
IKMR	I Know My Rights Institution
IMDH	Instituto de Migrações e Direitos Humanos (Migration and Human Rights Institute)
IPEA	Instituto de Pesquisa Econômica Aplicada (Institute of Applied Economic Research)
Law of Introduction to Brazilian Standards	Law Decree No. 4,657/1942 (Lei de Introdução às Normas do Direito Brasileiro)
Law of Prevention against Domestic and International Trafficking of Individuals	Federal Law No. 13,344/2016, enacted on October 6, 2016, which provides guidelines for the protection and care for victims of international trafficking
MRE	Ministério das Relações Exteriores (Ministry of Foreign Affairs)
National Policy to Combat Trafficking of Individuals	(Política Nacional de Enfrentamento ao Tráfico de Pessoas), which aims at creating a ministerial working group to draft the National Work Plan to Combat Trafficking of Individuals (PNETP)
New Migration Law	Law No. 13,445/2017, published on May 5, 2017, which establishes the rights and duties for migrants and tourists in Brazil.
Palermo Protocol	Presidential Decree No. 5,017/2004, enacted on March 12, 2004, which establishes specific safeguards that shall be granted to child victims of trafficking
PARR	Programa de Apoio para a Recolocação de Refugiados (Program for Assistance on the Reallocation of Refugees)
PIA	Plano de Atendimento Individual (Individual Attendance Plan – IAP)
Public Attorney’s Office	Brazilian body of independent public prosecutors at federal ( <i>Ministério Público Federal</i> ) and state level ( <i>Ministério Público Estadual</i> )
RNE	Registro Nacional de Estrangeiros (National Register of Foreigners)
SANCAST	Special sector of the São Paulo Judicial branch that aims to take care of children and adolescents seeking refuge and foreign victims of international trafficking of humans
SEDH	Secretaria Especial de Direitos Humanos (Special Secretariat for Human Rights)
SENAI	Serviço Nacional de Aprendizagem Industrial (National Service of Industrial Learning)
SEPPIR	Secretaria Nacional de Políticas de Promoção da Igualdade Racial (Special Secretariat for Policies for the Promotion of Racial Equality)
SNAS/MDS	Departamento de Proteção Social Especial (Department of Special Social Protection)
SUAS	Sistema Único de Assistência Social (Unified Social Assistance System)
SUS	Sistema Único de Saúde (Brazilian Public Health System)
UBS	Unidade Básica de Saúde (Basic Health Unit)

## 1. Application of international law in domestic law of Brazil

### 1.1. Status of international treaties in Brazilian domestic law

International treaties are valid within the Brazilian legal system when they are executed by the President<sup>10</sup> and later approved by the National Congress<sup>11</sup>, which, upon approval, issues a Legislative Decree. After National Congress approval, the treaty returns to the executive power, i.e. to the President, to be ratified and enacted through a Presidential Decree.

The Brazilian Federal Constitution does not determine the specific position of international treaties within the internal legal system. However, according to scholars and certain precedents<sup>12</sup>, international treaties have the same legal hierarchy as federal laws. Meaning that they integrate into the internal legal system as infra-constitutional rules<sup>13</sup>.

Accordingly, when faced with a conflict of laws between provisions contemplated in an international treaty and the Federal Constitution, the provisions set forth in the Constitution will always prevail. In turn, whenever there is a conflict between provisions of an international treaty – which has been duly ratified by the President - and an infra-constitutional law, given that the international treaty and infra-constitutional laws have the same legal hierarchy it will be the law that was executed and published the latest that will prevail. This law will act to revoke any prior rules relating to the same matter(s)<sup>14</sup>.

International treaties relating to human rights<sup>15</sup> that have been duly ratified and approved by the legislative process required for constitutional amendments may receive a different treatment and be given a different status in the hierarchy of norms<sup>16</sup>.

Here, these international treaties have the same legal hierarchy as a constitutional provision. This is thanks to Constitutional Amendment No. 45, enacted in December 2004. This amendment, as interpreted by the Supreme Federal Court<sup>17</sup>, provides that these international treaties should not be considered ordinary federal (infra-constitutional) law, but rather receive the same status as constitutional provisions.

As a result, whenever facing a conflict between provisions contemplated in a human rights international treaty and the Federal Constitution, the provisions set forth in the Constitution will

---

<sup>10</sup> CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL 1988 (CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL), article 84. “The President of the Republic shall have the exclusive power to: (...) VIII – conclude international treaties, conventions and acts, ad referendum of the National Congress”.

<sup>11</sup> CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL 1988 (CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL), article 49. “It is exclusively the competence of the National Congress: I – to decide conclusively on international treaties, agreements or acts, which result in charges or commitments that go against the national property”.

<sup>12</sup> SUPREME FEDERAL COURT (SUPREMO TRIBUNAL FEDERAL). Extraordinary Appeal No. 8,004, 1977.

<sup>13</sup> CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL 1988 (CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL), article 102. “The Supreme Federal Court is responsible, essentially, for safeguarding the Constitution, and it is within its competence: (...) III – to judge, on extraordinary appeal, cases decided in a sole or last instance, when the decision appealed: (...) b) declares a treaty or a federal law unconstitutional”.

<sup>14</sup> Law-Decree No. 4,657/1942, article 2, paragraph 1. “A later law revokes the former when expressly stated; when is incompatible with it or when fully regulates the matter regulated by the former law”.

<sup>15</sup> CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL 1988 (CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL), article 5, paragraph 2. “The rights and guarantees expressed in this Constitution do not exclude others deriving from the regime and from the principles adopted by it, or from the international treaties in which the Federative Republic of Brazil is a party”. Paragraph 3. “International human rights treaties and conventions which are approved in each House of the National Congress, in two rounds of voting, by three fifths of the votes of the respective members shall be equivalent to constitutional amendments”.

<sup>16</sup> LEE, E. HÖLLER. A incorporação dos tratados internacionais de direitos humanos pelo ordenamento jurídico brasileiro.

Rio Grande: *Âmbito Jurídico*, v. 15, n. 97, 2012. Available at: [http://www.ambito-juridico.com.br/site/?n\\_link=revista\\_artigos\\_leitura&artigo\\_id=11170&revista\\_caderno=16](http://www.ambito-juridico.com.br/site/?n_link=revista_artigos_leitura&artigo_id=11170&revista_caderno=16). Last access on: March 30, 2017.

<sup>17</sup> SUPREME FEDERAL COURT (SUPREMO TRIBUNAL FEDERAL). Extraordinary Appeal No. 466,343-SP, 2008.

prevail. However, once these human rights international treaties are duly approved (i.e. in accordance with the same requirements for approving amendments to the Brazilian Federal Constitution) these treaties cannot be changed by another constitutional amendment and will have immediate application upon ratification<sup>18</sup>.

## 1.2. Ratified international treaties:

Brazil is a signatory to the Convention on the Rights of the Child (1989) (“Convention”), which was duly ratified and enacted by Decree No. 99,710/1990, including the optional protocols relating to (a) the involvement of children in armed conflicts, (b) the sale of children, child prostitution and child pornography, and (c) the communications procedure<sup>19</sup>.

Additionally, Brazil has ratified the International Convention for the Suppression of Women and Children Trafficking, as amended by the Protocol signed at Lake Success, and accepted by Brazil in 1950<sup>20</sup>.

With particular regard to migrants and refugees, Brazil is a signatory to the Convention relating to the Status of Refugees, which was duly ratified and enacted by Decree No. 50,215/1961<sup>21</sup>. In 1972, Brazil also accepted its protocol<sup>22</sup>.

Regionally, Brazil executed the agreement concerning the Illicit Trafficking of Migrants between the States of Mercosur, Bolivia and Chile, in December 2004 and amended in 2007<sup>23</sup>.

It is important to note that the majority of the treaties mentioned were ratified by Brazil with no relevant reservations related to the subject of this research.

In addition to the above international treaties incorporated into the Brazilian legal system, it is noted that Brazil provides equal protection to migrant children as is provided to all other children (non-migrant), safeguarding them in accordance with the general rules applicable for protecting children’s rights. The major law safeguarding children’s rights in Brazil is the ECA.

## 1.3. How is the principle of “best interest of the child” interpreted in domestic law?

Since the Declaration of the Rights of the Child (1959), a child is internationally recognized as a subject of personal rights, deserving of protection and assistance in accordance with the peculiar condition of a being in process of physical, intellectual and emotional development.. In this context, we identify the growing importance of the principle of best interest of the child.

---

<sup>18</sup> SOARES, C. O. Os tratados internacionais no ordenamento jurídico brasileiro: análise das relações entre o direito internacional público e o direito interno estatal. *Âmbito Jurídico*, v. 14, n. 88, 2011. Available at: [http://www.ambitojuridico.com.br/site/?n\\_link=revista\\_artigos\\_leitura&artigo\\_id=9431&revista\\_caderno=16](http://www.ambitojuridico.com.br/site/?n_link=revista_artigos_leitura&artigo_id=9431&revista_caderno=16). Last access on: March 30, 2017.

<sup>19</sup> UNITED NATIONS TREATY COLLECTION. Chapter IV: human rights. Available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=UNTSO&mtdsg\\_no=IV-11&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=UNTSO&mtdsg_no=IV-11&chapter=4&clang=en). Last access on: March 30, 2017.

<sup>20</sup> UNITED NATIONS TREATY COLLECTION. Chapter VII: traffic in persons. Available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=UNTSO&mtdsg\\_no=VII-1&chapter=7&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=UNTSO&mtdsg_no=VII-1&chapter=7&clang=en). Last access on: March 30, 2017.

<sup>21</sup> UNITED NATIONS TREATY COLLECTION. Chapter V: refugees and stateless person. Available at: [https://treaties.un.org/Pages/ViewDetailsII.aspx?src=UNTSO&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&clang=en#12](https://treaties.un.org/Pages/ViewDetailsII.aspx?src=UNTSO&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=en#12). Last access on: March 30, 2017.

<sup>22</sup> UNITED NATIONS TREATY COLLECTION. Chapter V: refugees and stateless person. Available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=UNTSO&mtdsg\\_no=V-5&chapter=5&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=UNTSO&mtdsg_no=V-5&chapter=5&clang=en). Last access on: March 30, 2017.

<sup>23</sup> CHAMBER OF DEPUTIES (CÂMARA DOS DEPUTADOS). International treaties ratified by Brazil. Available at: <http://www2.camara.leg.br/atividade-legislativa/comissoes/comissoesmistas/cpcms/normativas/decretos-legislativos-relativos-ao-mercosul>. Last access on: March 30, 2017.

Aligned with the above principle, the Brazilian Federal Constitution provides for the principle of human dignity<sup>24</sup>, which is expressly extended to children through the principle of integral protection<sup>25</sup>. This core principle is also reflected in the ECA, which expressly recognizes children and adolescents as subjects of rights determined by the Federal Constitution<sup>26</sup>. Thus, Brazilian laws recognize the rights of dignity, freedom and autonomy for children and teenagers.

However, the Brazilian Federal Constitution and the ECA do not expressly recognize the best interests principle as a general principle. In this regard, scholars understand this principle to derive from an interpretation of the principle of integral protection<sup>27</sup>, which is of constitutional origin (see above, Article 227 of the Brazilian Federal Constitution).

The principle of integral protection is part of the Brazilian legal system by means of Decree No. 99,710/1990 (which ratified the Convention) through its article 3.1: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.

Upon ratification, the convention’s provisions became part of Brazilian law. As it has been executed prior to the ECA, any provisions in conflict with the ECA were revoked. As a result, and in order to maintain/restore the revoked provisions of the Convention, Federal Law No. 12,010/2009 amended the ECA to include the principle of best interest, and to specifically recognize its application in protection measure case<sup>28</sup>.

All in all, the principle of the best interest of child provides guidance in decisions regarding familial conflicts, and allows the interests of the children and adolescents to prevail over any other interests at stake. Courts must strive to find the best options, and solutions for the children involved. Even in cases where there is no conflict, or the conflict is two competing interests of the same child, the principle of best interests must always guide the judicial decision.

Scholars, in general, do not contemplate an exact and objective definition of the principle of the best interests of the child, save that it must always be reviewed in accordance with the constitutional core principles, including the principle of the human dignity<sup>29</sup>. Scholars also understand that it is impossible to define all the situations in which the best interest must be considered, since it is subjective and must be reviewed on a case-by-case basis.

In a review of relevant Brazilian Courts precedents, we observed that the applicability of this

---

<sup>24</sup> CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL 1988 (CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL), article 1. “The Federative Republic of Brazil, formed by the indissoluble union of the states and municipalities and of the Federal District, is a legal democratic state and is founded on: (...) III – the dignity of the human person”.

<sup>25</sup> CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL 1988 (CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL), article 227. “It is the duty of the family, society, and the State to ensure children, adolescents, and young people, with absolute priority, the right to life, health, nourishment, education, leisure, professional training, culture, dignity, respect, freedom, and family and community life, as well as to guard them from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression”.

<sup>26</sup> Law No. 8,069/1990, article 3. “Without prejudice to the full protection treated of in this Law, the child and adolescent enjoy all the fundamental rights inherent to the human person and, by law or other means are ensured of all opportunities and facilities to entitle them to physical, mental, moral, spiritual and social development, in conditions of freedom and dignity. (...)” Article 15. “The child and adolescent have the right to freedom, respect and dignity as human beings in process of development and as a subject of civil, human and social rights guaranteed by the Constitution and in law”.

<sup>27</sup> COLUCCI, C. F. P. Princípio do melhor interesse da criança: construção teórica e aplicação prática no direito brasileiro. São Paulo: USP, 2014.

<sup>28</sup> Law No. 8,069/1990, article 100. “The protection measures are also guided by the principle: IV – higher interest of children and adolescents: the intervention must follow primarily the interests and the rights of children and adolescents, without prejudice of considering the other lawful interests of the concrete situation”.

<sup>29</sup> GONÇALVES, C. J. M. Breves considerações sobre o princípio do melhor interesse da criança e do adolescente. Revista Brasileira de Filosofia, v. 36, 2011. Available at: [http://www.editoramagister.com/doutrina\\_23385195\\_BREVES\\_CONSIDERACOES SOBRE O PRINCIPIO DO MELHOR INTERESSE DA CRIANCA E DO ADOLESCENTE.aspx](http://www.editoramagister.com/doutrina_23385195_BREVES_CONSIDERACOES SOBRE O PRINCIPIO DO MELHOR INTERESSE DA CRIANCA E DO ADOLESCENTE.aspx). Last access on: May 10, 2017.

principle is majorly related to family law cases, such as lawsuits discussing adoption or guardianship of children. A concrete example is the decision of the Superior Court of Justice, which granted an adoption order to a homosexual couple given the relationship that existed between the couple and the children, considering that it was in the best interests of the children to remain in the existing family unit<sup>30</sup>.

Therefore, it can be concluded that the Brazilian legal interpretation of the principle of best interest of the child takes into consideration the factual circumstance of a given case.

#### 1.4 Separated and unaccompanied children:

The Committee on The Rights of the Child (‘the Committee’), in its General Comment No. 6 (2005)<sup>31 32</sup>, considers unaccompanied children (also called unaccompanied minors) to be children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so (as defined in Article 1 of the Convention<sup>33</sup>).

In turn, separated children are, according to the Committee and in accordance with Article 1 of the Convention, children who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. Therefore, this category of children may, include children accompanied by other adult family members.

Although the Brazilian legal system does not expressly provide a special definition for the above ‘categories’ of children, a recent publication issued as part of a joint initiative (Joint Normative Resolution) of the National Council for Children and Adolescents (CONANDA), the National Committee for Refugees (CONARE), the National Council of Immigration (CNIg) and the Office of Federal Public Defender (DPU)<sup>34</sup> refers to the Committee's definitions of unaccompanied and separated children.

Published on 31 January 2017 by the Ministry of Justice the Joint Normative Resolution mentioned hereinabove regulates procedures for preliminary identification, and the care and protection of children or adolescents who are unaccompanied or separated. In its preamble, it expressly indicates that General Comment No 6 should be used as a reference for its interpretation and applicability.

## 2. Reception of children in Brazil

### 2.1. Initial evaluation

#### 2.1.1 Examination of claims by migrant children

The ECA contemplates the equal treatment of Brazilian children and children from other nationalities who are within the Brazilian territory. There is however no specific procedure within the ECA for requesting refugee status or a permanent visa for children - accompanied or not.

Regarding the migrant child, it is important to note that the New Migration Law established rights

---

<sup>30</sup> SUPERIOR COURT OF JUSTICE (SUPERIOR TRIBUNAL DE JUSTIÇA). Special Appeal No. 889,852-RS, 2010.

<sup>31</sup> OHCHR. Committee on the rights of the child thirty-ninth session. General comment No. 6. Available at: <http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf>. Last access on: May 5, 2017.

<sup>32</sup> General background paper of 10<sup>th</sup> European Forum on the rights of the child. The protection of children in migration, 2016.

<sup>33</sup> Decree 99,710/1990 (Convention on the Rights of the Child), article 1. “For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.

<sup>34</sup> Joint Resolution between CONANDA, CONARE, CNIg and DPU. Available at: [http://www.direitosdacrianca.gov.br/conteudos/ResolucaoNormativaconjuntaCONARECNIgCONANDADPUverso10.03.17.doc/at\\_download/file](http://www.direitosdacrianca.gov.br/conteudos/ResolucaoNormativaconjuntaCONARECNIgCONANDADPUverso10.03.17.doc/at_download/file). Last access on: August 28, 2017.

and duties for migrants and tourists in Brazil. The New Migration Law recognizes the migrant, regardless of his/her nationality, as an individual rights holder, entitled to rights and promotes the fight against xenophobia, and contemplates principles aimed to combat discrimination as part of Brazil's migration policy. One of the guidelines established in article 3, section XVII, is the "fundamental protection and attention to the superior interest of the migrant child and adolescent".<sup>35</sup>

Before the New Migration Law was in effect, there were no specific procedures to be observed for migrant children who arrived unaccompanied in Brazil, leaving them extremely vulnerable. Through a specific procedure of the National Immigration Council, accompanied children could obtain a dependent visa (linked to the relative they arrived with) allowing them to remain in Brazil.

The procedure for children to request refugee status depends on whether or not a child is accompanied or unaccompanied. For an accompanied child, any request for refugee status made by a legally capable relative accompanying them will, pursuant to article 2 of the Brazilian Refugee Law, be extended to the child.

For an unaccompanied child, the State, represented by the Federal Public Defender's Office, is responsible for requesting the child's refugee status to the Ministry of Justice. In practice, the number of unaccompanied children crossing Brazilian borders is negligible. Generally, children requesting refugee status in Brazil are accompanied by their relatives.

Children may not claim a status independent from the adults traveling with them. Nonetheless, the Federal Public Defender (presently, Daniel Chiaretti) has indicated that at institutional border controls, especially airports, members of the federal police are trained to identify situations of human trafficking or suspected child abuse.<sup>36</sup>

### 2.1.2 Interviewers collecting accounts of migrant children

Given the continental dimension of the Brazilian territory and the small number of immigration control barriers, initial evaluation interviews generally occur on a case needs basis. The larger immigration control barriers are located in international airports, such as Guarulhos and Rio de Janeiro; and at ports, such as Santos and Rio de Janeiro. When refugees arrive in Brazil over land there is typically no State representative to greet children, and due to the lack of barrier an initial evaluation interview rarely occur. For arrivals at airports, a specific interview may happen if the federal police identify a suspected harmful situation, such as trafficking or sex abuse.

Within the procedure to request refugee status an interview is required. The body in charge of such interviews is the National Refugee's Committee. Preferably, the interview is carried out in a language that is easily understood by the applicant, however, interviewers do not speak many languages and commonly request an *ad hoc* interpreter.

There is no code of conduct applicable to these interviews.

### 2.1.3 Settings for interviews

As mentioned above, when a child arrives and a potential harmful situation is identified he/she is interviewed by the federal police. Generally, such an interview occurs at the federal police premises. It is unknown if this is an adequate environment for a child.

---

<sup>35</sup> Note that the Migration Law was approved and published on May 5, 2017, it did not and did enter into effect until only 180 days after such date following approval (1 November 2017).

<sup>36</sup> Personal interview with Daniel Chiaretti (Federal Public Defender) conducted by the Mattos Filho's group of researchers on May 15, 2017.



## 2.1.4 Child specific process

Article 227 of the Brazilian Federal Constitution grants all children absolute priority in measures involving the rights to life, health, food and education.

Further, as mentioned above, CONANDA, CONARE, CNIg and DPU have issued a normative resolution<sup>37</sup> establishing that every action or proceeding involving unaccompanied or separated children must be in accordance with the principles of full protection, absolute priority, and the child's best interest.

## 2.1.5 Extension of child-sensitive measures to youth

No. As a rule, only individuals up to 18 years old are entitled to child-sensitive measures. Although article 2 of the ECA extends such benefits to individuals aged between 18 and 21, the authors in researching this matter have not been able to identify any provision applying this extension to migration related issues.

## 2.2. Establishment of identity /Age assessment

The Consultative Opinion OC 21/14<sup>38</sup> (‘the Opinion’) made various specific determinations and those relating to refugee reception centers should be highlighted. According to the Opinion, the age of a child shall be taken into account during the reception process in the foreign country for the purpose of allocation and housing matters, and for identifying the individual treatment each child requires in order to meet his/her specific needs (enunciation 179). Enunciation 181 sets out that any housing provided upon reception must allow for the ‘full personal development’ of the child, and establishes an obligation to provide infrastructure capable of ensuring the child is granted a certain level of privacy, safety, complete and nutritious food, access to physical and psychosocial health services, and a place for leisure and recreation.

As a rule, identification in documents issued in the country of origin or information provided by the children or his/her parents, siblings and/or relatives is accepted in good faith by public authorities. According to Judge Fadigas César<sup>39</sup> and Federal Public Defender, Daniel Chiaretti<sup>40</sup>, there is no institutionalized procedure for the age assessment of migrant children in Brazil.

Over several years of dealing with the rights of migrant children, Judge Roberto Fadigas César has ruled on one case regarding age assessment. This case involved an African child whose body age apparently did not match with his declared age<sup>41</sup>.

In that case, the assessment was carried out by a court appointed expert, who conducted a bone examination. The result of the examination was inconclusive as his bone data was different from the available parameters (based on data from the body constitution of Brazilians).

---

<sup>37</sup> Joint Resolution between CONANDA, CONARE, CNIg and DPU. Available at: <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=1&pagina=37&data=18/08/2017>. Last access on: July 20, 2017.

<sup>38</sup> INTER-AMERICAN COURT OF HUMAN RIGHTS (CORTE INTERAMERICANA DE DIREITOS HUMANOS). *Advisory opinion OC-21/14 OF August 19, 2014: rights and guarantees of children in the context of migration and/or in need of international protection*. Available at: [http://www.corteidh.or.cr/docs/opiniones/seriea\\_21\\_eng.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf).

<sup>39</sup> Personal interview with P. R. Fadigas César (State Judge) conducted by the Mattos Filho's group of researchers on July 21, 2017.

<sup>40</sup> Personal interview with Daniel Chiaretti (Federal Public Defender) conducted by the Mattos Filho's group of researchers on May 15, 2017.

<sup>41</sup> Personal interview with P. R. Fadigas César (State Judge) conducted by the Mattos Filho's group of researchers on July 21, 2017.

In view of this limitation the relevant public authorities accepted the age declared by refugee seeker in good faith.

According to Judge Fadigas César<sup>42</sup> and researcher Graziella Rocha<sup>43</sup>, there are no relevant cases of age assessment in Brazil.

The only case identified regarding age assessment was carried out by a court appointed expert, and an uncertain result was obtained. In that specific case, the child was granted the benefit of the doubt and public authorities accepted his self-declared age. However, we cannot identify a formal/consistent rule on this point.

As per the answer to question 2.1.4., article 227 of the Federal Constitution grants all children absolute priority in measures involving the rights to life, health, food and education. In practical terms, if on one hand the priority is granted to the rights, on the other, the absence of a structured public policy for migrant children and refugees, makes the procedures variable depending on each specific situation. This reality may change with the recent publication of the New Migration Law and the Joint Resolution mentioned in section 1.4, that sets out that “every action or proceeding involving unaccompanied or separated children must comply with the principles of full protection, absolute priority, and the child’s best interest.

Brazil’s Refugee Law establishes that once the federal police register the refugee, he/she can request an identity card in Brazil. In principle, the rules establish only the right to obtain a ‘National Registration of Foreigner’ - RNE, which differs from a birth certificate and therefore does not address issues for refugee children who have not had their birth registered.

However, Brazil is subject to the international obligation of host countries to provide administrative assistance<sup>44</sup>, and public authorities are to make all available efforts to provide birth certificates to such children, including the issuance of such documents.

Nevertheless, in Special Appeal No. 1.475.580<sup>45</sup>, the Superior Court of Justice denied the issuance of a birth certificate to a refugee child, stating that the RNE already grants the access to all fundamental rights to refugee children in Brazil. In summary, the justices of the Superior Court claimed that, pursuant to public registration law, civil registration in Brazil is a right exclusively granted to Brazilian citizens; foreigners, according to the Court, and specially refugees are duly protected under Brazilian law after obtaining the RNE.

## **2.3. Migrant children victims of trafficking**

### **2.3.1. Safeguards to protect migrant children victims of trafficking**

Brazilian legislation sets forth certain statutory safeguards, seeking to protect migrant child victims of trafficking. For instance, the Palermo Protocol, was signed and ratified by Brazil<sup>46</sup>, and enacted on 12 March, 2004, as was the "Additional Protocol to the United Nations Convention against Transnational Organized Crime Relating to the Prevention, Suppression and Punishment of Trafficking of Individuals, Especially Women and Children”. The Palermo Protocol sets forth

---

<sup>42</sup> Personal interview with P. R. Fadigas César (State Judge) conducted by the Mattos Filho’s group of researchers on July 21, 2017.

<sup>43</sup> Personal interview with Graziella Rocha (Human Rights researcher) conducted by the Mattos Filho’s group of researchers on July 5, 2017.

<sup>44</sup> Article 25 of the Convention Related to the Refugees Statute of 1951 and Article 7 of the Convention on Children’s Rights, enacted by Decree No. 99,710, from November 21, 1990.

<sup>45</sup> SUPERIOR COURT OF JUSTICE (SUPERIOR TRIBUNAL DE JUSTIÇA). Special resource nº 1475580, Brasília, DF, 4 may. 2017. Available at:

[https://ww2.stj.jus.br/processo/revista/documento/mediado/?componente=ATC&sequencial=72572072&num\\_registro=201401087793&data=20170519&tipo=5&formato=PDF](https://ww2.stj.jus.br/processo/revista/documento/mediado/?componente=ATC&sequencial=72572072&num_registro=201401087793&data=20170519&tipo=5&formato=PDF). Last access on: June 12, 2017.

<sup>46</sup> Decree No. 5,017/2004. Available at: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2004-2006/2004/decreto/d5017.htm](http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2004/decreto/d5017.htm). Last access on: May 12, 2017.



specific safeguards that shall be granted to child victims of trafficking. Such as: adequate housing; medical and psychological care; and opportunities for education and professional formation<sup>47</sup>.

In addition, the Law of Prevention against Domestic and International Trafficking of Individuals<sup>48</sup> and the National Policy to Combat Trafficking of Individuals<sup>49</sup> establishes specific guidelines, rights, and legal mechanisms for the protection and care of victims of international trafficking. This includes social assistance, the provision of temporary shelter, and addressing the right of children to family and community reintegration.

The Law of Prevention against Domestic and International Trafficking of Individuals was drafted and proposed by a special commission of the Federal Senate, which was created to analyze international human trafficking in Brazil ("Commission"). This Commission carried out due diligence and interacted with the community and civil society organizations who deal with this topic on a daily basis. The purpose of the Commission was to adapt the existing legislation to the reality - optimizing the work of the authorities, both in criminal prosecution and in the assistance of trafficking victims. The resulting law covers both points of view and provides an improved legal foundation for solving a constant problem identified by NGO's in public hearings: namely, the lack of specific means and resources to assist victims of trafficking.

According to this law, the protection and care for direct or indirect victims of human trafficking includes the following safeguards:

- legal, social, labor, employment and health care assistance;
- reception and provision of temporary shelter;
- attention to their specific needs, especially related to gender, sexual orientation, ethnic or social origin, nationality, race, religion, age group, migratory situation, professional activity, cultural diversity, language, social and family ties or other status;
- preservation of intimacy<sup>50</sup> and identity;
- prevention against re-victimization while in care, and through investigative and judicial procedures;
- humanized care; and
- provision of information regarding administrative and judicial proceedings.

The legislation also governs measures to: prevent and disrupt situations of: exploitation or violence; provide for the social reinsertion of victims; grant access to education, culture, vocational training, and work; and, in the case of children and adolescents, promote family and community reintegration.

With respect to the rights of refugee children, Brazil is a signatory to the 1989 CRC, which resulted in the publication of the Statute of the Child and Adolescent (Law No. 8,069 of July 13, 1990). This is an important piece of legislation that addresses the protection of children and adolescents in several aspects<sup>51</sup>. Contrary to the CRC, the ECA does not refer to refugee children.

However, interviews conducted for this research with Brazilian experts and a member of the Federal Public Defender's Office, reveal that Brazilian courts have ruled that provisions in the ECA shall be equally applicable to migrant and refugee children. The courts' view is that the provisions in the ECA must be construed in light of the general principles of the Federal

---

<sup>47</sup> Article 6, No. 3, items (a), (b), (c) and (d) of the Palermo Protocol.

<sup>48</sup> Law No. 13,344/2016. Available at: [http://www.planalto.gov.br/ccivil\\_03/ato2015-2018/2016/lei/L13344.htm](http://www.planalto.gov.br/ccivil_03/ato2015-2018/2016/lei/L13344.htm). Last access on: May 12, 2017

<sup>49</sup> Decree No. 5,948/2006. Available at: [http://www.planalto.gov.br/ccivil\\_03/ato2004-2006/2006/Decreto/D5948.htm](http://www.planalto.gov.br/ccivil_03/ato2004-2006/2006/Decreto/D5948.htm). Last access on: May 12, 2017.

<sup>50</sup> In the Brazilian legal system, the protection of the child's "intimacy" refers to a notion of preservation of honor and individual image, mainly when children are involved in criminal cases, whether as victims or perpetrators.

<sup>51</sup> Law No. 8,069/1990, article 70. "It is the duty of the community to prevent a threat or violation of the rights of children and adolescents".

Constitution and values such as the dignity of the individual, the prevalence of human rights, the equality of foreigners and Brazilians and the protection of children are applicable to refugees. Similarly, the Federal Constitution aims at protecting and ensuring certain constitutional rights: the rights to life, health, food, education, leisure, professionalization, culture, dignity, respect, freedom and family and protection against any form of neglect, discrimination, exploitation, violence, cruelty and oppression.

Further, Consultative Opinion OC 21/14<sup>52</sup> – issued in response to an inquiry made by Brazil and three other countries (Argentina, Uruguay and Paraguay) – demonstrates an effort on the behalf of the Inter-American Court to establish a minimum set of standards and rights aimed at guaranteeing the protection of migrant children’s rights, regardless of whether or not they are victims of trafficking.

Consultative Opinion OC 21/14 emphasizes that Governments should comply with the less harmful alternative, that at the same time, fully protects the rights of the child and addresses any migration issues, taking into account whether the child is alone or separated from his/her family in order to ensure family integration.

The Inter-American Court has determined that Governments are obligated not to transfer any person to a country where there is risk of serious violations of their fundamental rights such as, life, freedom and physical integrity. Therefore, the Court established that "any decision on the return of a child to the country of origin or to a safe third country may only be based on the requirements of his or her best interest, taking into account the risk of violation of the human rights of the child."

Notwithstanding this, the aforementioned international and domestic statutory safeguards are not strictly complied with by authorities in Brazil. Although it may be difficult to quantify the trafficking of children (and Brazil lacks a database in this regard), according to the United Nations Office on Drugs and Crimes, trafficking of children worldwide continues to rise and accounts for one-third of the world's human trafficking cases<sup>53</sup>. In this regard, although Brazilian legislation does provide for institutional safeguards, the research indicates that those safeguards are not necessarily put in place in order to protect migrant children who are victims of trafficking.

### **2.3.2. Information provided to migrant children about potential risks and how/where to report and seek protection**

Migrant children enter the country through different ways and under very different circumstances. Independent testimonials collected from authorities and key persons involved with migrant children<sup>54</sup> reveals that the assistance granted to migrant children varies depending on the context of their migration, and the degree of information received depends on the local authorities that first interact with them when entering the country.

When the arrival is through airports or ports, they are likely to receive information from official bodies, such as the federal police and/or customs officials. It is common, however, for migrants to illegally enter Brazilian territory through land borders and be assisted by non-official bodies (e.g. catholic missionaries and NGOs). Given the extent of Brazilian borders, the lack of efficient monitoring and the various forms of entry, the research we carried out demonstrates that not all

---

<sup>52</sup> INTER-AMERICAN COURT OF HUMAN RIGHTS (CORTE INTERAMERICANA DE DIREITOS HUMANOS). *Advisory opinion OC-21/14 OF August 19, 2014: rights and guarantees of children in the context of migration and/or in need of international protection*. Available at: [http://www.corteidh.or.cr/docs/opiniones/seriea\\_21\\_eng.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf). Last access on: August 28, 2017.

<sup>53</sup> UNITED NATIONS OFFICE ON DRUGS AND CRIME. *Global Report on Trafficking In Persons 2014*. Available at: [http://www.unodc.org/res/cld/bibliography/global-report-on-trafficking-in-persons\\_html/LOTIP\\_2014\\_full\\_report.pdf](http://www.unodc.org/res/cld/bibliography/global-report-on-trafficking-in-persons_html/LOTIP_2014_full_report.pdf)

<sup>54</sup> In undertaking this work we interviewed Graziella Rocha (Brazilian expert in human trafficking at Brazilian Association for the Defense of Women, Childhood and Youth – ASBRAD), Larissa Leite (Coordinator of the Protection Department of the Reference Center for Refugees - Caritas Brasileira), Isabela Mazao and Vinicius Feitosa (representatives of the United Nations High Commissioner for Refugees); the Public Attorney’s Office and the Brazilian Federal Police officials.

migrant children (not even most of them), receive adequate care and information on the potential risks they may be subject to, and how/where to report violations and seek protection.

Language is commonly a barrier, especially for children that enter Brazil without passing through the custom and clearance procedure conducted by public authorities, as many of the non-official bodies described above do not speak a second language. In addition, there is a lack of interaction between local governments and NGOs/social service organizations in remote locations. This results in different procedures and information from one place to another.

The federal police verbally reported that for those children who have passed through official customs and clearance procedures, that after the first contact with federal police's officials, the migrant is usually directed to NGOs contracted out to work in partnership with governments to promote specialized care, and provide information and social services (such as housing, food and health). Therefore, while under the care of these NGOs, migrant children may have a certain degree of adequate assistance with respect to their rights, and some safeguard against potential risks.

The organizations of reference identified in Brazil are: Institute for the Reintegration of Refugees - ADUS<sup>55</sup>; Caritas Archdiocese; the United Nations High Commission for Refugees - UNHCR<sup>56</sup>; The I Know My Rights Institution - IKMR<sup>57</sup>; and the Brazilian Association for the Defense of Women, Children and Youth - ASBRAD<sup>58</sup>. IKMR and ASBRAD are the only institutions in Brazil exclusively dedicated to the protection of refugee and migrant children.

The National Committee for Refugees - CONARE is the most significant official body. It has legal authority<sup>59</sup> to monitor the status of refugee applicants by conducting monthly interviews with them. Because of this process, CONARE is able to identify social service mechanisms necessary to fulfill their rights, and then direct applicants to relevant and appropriate shelters and organizations.

### **2.3.3. Verification that adults accompanying a migrant child have parental responsibility over the child or are the legal guardians of the child**

Pursuant to verbal informal provided by federal police officials (who requested anonymity) officers usually assume that foreign children leaving/entering Brazil have already been subject to inspection by local authorities before leaving their countries of origin. Therefore, unless there is an exceptional circumstance the Brazilian federal police report that this type of automatic verification is not carried out for foreign migrant children. An exceptional circumstance would be if there is an ongoing investigation, allegations, or suspicion by a border official or any other local authority, of potential trafficking of children that would justify a different approach to the adults accompanying a migrant child. In such cases, the relationship of the child with the responsible adult must be duly assessed.

It was reported that at the international border of Foz do Iguaçu (State of Paraná) there are, periodically, reports and suspicions of child trafficking that lead authorities to approach vehicles with children (both Brazilian and foreign) who have crossed, or would have crossed, the border. Otherwise, foreign children are only subject to verification of the validity of their passports.

Despite the absence of a defined legal procedure to verify whether adults accompanying a migrant child have parental responsibility or are his/her legal guardians, CONARE, DPU (São Paulo branch) and other authorities, have issued a joint resolution<sup>60</sup> which seeks to establish specific

<sup>55</sup> REINTEGRATION OF THE REFUGEE INSTITUTE – BRAZIL (INSTITUTO DE REINTEGRAÇÃO DO REFUGIADO – BRASIL). Available at: <http://www.adus.org.br/>. Last access on: August 28, 2017.

<sup>56</sup> UNHCR. Available at: <http://www.unhcr.org/brazil.html>. Last access on: August 28, 2017.

<sup>57</sup> IKMR. Available at: <http://www.ikmr.org.br/>. Last access on: August 28, 2017.

<sup>58</sup> ASBRAD. Available at: <http://www.asbrad.com.br/>. Last access on: August 28, 2017.

<sup>59</sup> Pursuant to Article 12 of Federal Law No. 9.474/1997, which created CONARE.

<sup>60</sup> Joint Resolution without number entered into and by the Nacional Council for Rights of Children and Adolescent

procedures for the preliminary identification, and proper care and protection of unaccompanied children and adolescents.

The resolution is still under discussion, but it could fill gaps in the Brazilian legislation concerning situations currently neglected by local authorities. Differently from the current routine adopted by the federal police and identified in this research, the draft resolution imposes the immediate identification of an unaccompanied or separated child/ adolescent upon entering the Brazilian territory and establishes standard protocols. Unfortunately, it does not cover specific situations regarding adults accompanying a migrant child, such as those compatible with trafficking. However in those cases, certain general provisions and guidelines that examine the child's best interest could also be applicable.

#### **2.3.4. DNA tests**

Our independent research has not obtained information in this regard. However, courts, when duly moved, may grant injunctions and precautionary measures allowing DNA tests that can ascertain if an adult accompanying a migrant child has a genetic parental relationship with the child.

#### **2.3.5. Reintegration programs provided to migrant children victims of trafficking**

There is a project in Brazil called "Criança Migrante" ("Migrant Child", in a free English translation) promoted by a NGO known as ASBRAD aimed at guaranteeing the rights of migrant children and adolescents in Brazil, especially those with a background of sexual abuse. The project operates in three (3) municipalities with a high flow of migratory activity: Assis Brasil (state of Acre), Foz do Iguaçú (state of Paraná) and São Paulo (state of São Paulo). ASBRAD has not officially indicated intentions to replicate the project to other municipalities.

The project's methodology is based on the collection of data related to migration, immigration, and sexual exploitation in these regions, and training and professional qualifications of social workers specialized in assisting this specific public. It focuses on empowering professionals working with migrant children and adolescents. The training is usually carried out in short courses and teaches techniques for welcoming and assisting children. The Migrant Child project is carried out through the joint efforts of state, municipal and government human rights councils in the cities in which it operates.

There are other programs seeking to reintegrate migrant children in general, but which do not have a specific focus on children who are victims of trafficking. Among them, the "Children without Borders" meetings stand out, promoted by the Migration and Human Rights Institute (IMDH, a partner organization of the UN Agency for Refugees – UNHCR in Brazil), with the purpose of promoting children's integration and the opportunity for leisure and interaction within the host city communities. IKMR's initiatives and programs provide leisure activities and integration for refugee children as well as offering specialized services to refugee children. This includes their program on the "Right to Play", when, on several occasions during the year, such as the International Refugee Day and the Children's Week, the institution provides activities for children at amusement parks.

---

(CONANDA), National Committee for Refugees (CONARE), National Council of Immigration (CNIg) and the Office of Federal Public Defender (DPU). Available at: <http://www.direitosedacrianca.gov.br/resolucoes/resolucoes-conjuntas-do-conanda-2/resolucao-conjunta-conanda-conare-cnig-dpu-de/view>. Last access on: August 28, 2017.

## 2.4. Application for international protection

### 2.4.1. Child-specific forms of persecution considered for refugee status criteria

Brazilian legislation regarding children seeking refuge is sparse and quite limited. Therefore, provisions must be interpreted broadly to ensure a high degree of protection<sup>61</sup>. Please find below certain examples of existing relevant provisions:

- The Convention on the Rights of the Child (Article 22) establishes that States signatories must ensure that refugee children, or children seeking refugee status, are properly assisted and protected, permitting them to exercise all rights guaranteed by the Convention and other international humanitarian law instruments;
- The Brazilian Refugee Statute<sup>62</sup> provides legal mechanisms and creates procedures regarding the granting of refugee status stating<sup>63</sup> that an individual shall be considered a refugee if: (i) he or she is away from his/her country of origin and is subject to persecution based on race, religion, nationality, social group or political opinions; (ii) he or she has no nationality and is unwilling or unable to return to his/her country of origin; or (iii) due to generalized human rights violation, he or she is forced to leave his/her country and seek refuge elsewhere. It is noted that the Statute does not contain specific rules regarding children;
- CONARE is an entity under the jurisdiction of the Ministry of Justice, responsible for analyzing claims for refugee status. Although there is no specific criteria relating to children, when assessing such claims, CONARE has shown specific concern for vulnerable groups (i.e. women and children) especially if some of them belong to more than one vulnerable group<sup>64</sup>; and
- The National Immigration Committee issued a resolution<sup>65</sup> regarding foreign people who are trafficked or are victims of slavery. However, it does not contain specific rules for children.

In view of the above, one can conclude that Brazilian legislation does not provide a specific distinction between different types of child persecution, except for trafficked children or children subject to slavery which are subject to regulation through the provisions of the abovementioned resolution.

However, it is noted that the ECA contains a wide range of child-protection rules and expressly states that seeking refuge is an applicable right<sup>66</sup>. Although the provisions of this Statute do not specifically address children from different nationalities or those under refugee status, it must be interpreted broadly - permitting foreign children and adolescents in Brazil to benefit from the same rights and protections afforded to Brazilian children and adolescents. Therefore, all children and adolescents living in Brazil shall be protected and given the rights that all other children and adolescents are entitled to.

---

<sup>61</sup> MATTOS, A.L. A criança refugiada no Brasil: entre a falta de regulamentação e a necessidade de proteção. XII Seminário Nacional Demandas Sociais e Políticas Públicas na Sociedade Contemporânea, 2016.

<sup>62</sup> Law No. 9,474/1997.

<sup>63</sup> Law No. 9,474/1997, article 1, section I.

<sup>64</sup> LEÃO, Renato Zerbini Ribeiro; CONARE; ACNUR. O reconhecimento dos refugiados pelo Brasil - Decisões comentadas do CONARE. 2007, p. 35-37.

<sup>65</sup> NATIONAL COUNCIL OF IMMIGRATION (CONSELHO NACIONAL DE IMIGRAÇÃO). Normative Resolution No. 122/2016. Available at: <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=1&pagina=85&data=22/08/2016>.

Last access on: September 19, 2017.

<sup>66</sup> Pursuant to Law No. 8,069/1990, article 16, VII.



## 2.4.2. Children and social group for refugee status

Despite the lack of specific rules regarding children seeking refuge, CONARE is aware of concrete situations resulting from interpretation of article 1, section I of the Statute of Refuge (Law No. 9,474). The committee understands, for example, that forced recruitment of children by unlawful combatants enables the granting of refugee status.<sup>67</sup>

Moreover, as mentioned above, CONARE recognizes that foreigners, both adults and children, subject to human trafficking or forced labor may be granted special stay permits<sup>68</sup>.

In addition, the Inter-American Court of Human Rights, in Legal Opinion OC-21/14, requested by Brazil, Argentina, Paraguay and Uruguay, stated that personal factors such as belonging to an ethnic minority, having some sort of disability, and living with HIV/AIDS should be taken into account when assessing a child's refugee status.<sup>69</sup>

## 2.4.3. Capacity and willingness of the given Brazilian authorities to protect children victim when the agent of persecution is not the state the child is originating from

Brazilian authorities usually contact the consulate of the country of origin of the child whenever a child enters the country. However, if the child's country of origin is the agent of persecution, Brazilian authorities will never contact the consulate, as this would be counterproductive. In these cases, they will try to directly obtain refugee status for that child.

Problematically, it is not always easy to know the reason for the child's persecution as it depends on the will and the capacity of the child to communicate this information.

## 2.4.4. Deprivation of economic, social and cultural rights and international protection in Brazil

Law No. 9,474 establishes a broad set of criteria that determine recognition of an individual's refugee status, i.e persecution based on race, religion, nationality, social group or political opinions; or whether the individual was forced to leave his/her country of origin due to severe human rights violations recognized by the international community.

Current Brazilian regulations do not expressly provide for situations in which the deprivation of economic, social and cultural rights would constitute a cause for acknowledging an individual's refugee status. If, however, said deprivation is interpreted as a human rights violation, then it is possible to argue that, such violation would have the same effect as a violation of economic, social, cultural, civil and political rights in the assessment of refugee status.

For example, the recent economic crisis in Venezuela has increased the migration flow of individuals to Brazil. Accordingly, Brazil is trying to help that population as much as possible, similarly to what it has been doing with Haitians and Syrian refugees by granting humanitarian visas.

---

<sup>67</sup> LEÃO, Renato Zerbini Ribeiro; CONARE; ACNUR. O reconhecimento dos refugiados pelo Brasil: decisões comentadas do CONARE. 2007, p. 38.

<sup>68</sup> NATIONAL COUNCIL OF IMMIGRATION (CONSELHO NACIONAL DE IMIGRAÇÃO). Normative Resolution No. 122/2016. Available at: <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=1&pagina=85&data=22/08/2016>. Last access on: September 19, 2017.

<sup>69</sup> CORTE INTEAMERICANA DE DERECHOS HUMANOS. Parecer Consultivo OC-21/14 de 19 de Agosto de 2014: derechos e garantías de crianças no contexto da migração e/ou em necessidade de proteção internacional. p. 26. Available at: [http://www.corteidh.or.cr/docs/opiniones/seriea\\_21\\_por.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_21_por.pdf). Last access on: July 08, 2017.

## **2.5. Migrant children's access to justice**

### **2.5.1. Availability of legal aid for migrant children**

CONARE is responsible for guiding and coordinating actions for the effective protection, assistance and legal support of refugees. According to the Inter-American Court of Human Rights, States have the obligation to guarantee legal assistance to every child involved in a migration process by providing free legal representation services. According to the Inter-American Court of Human Rights, States have the obligation to guarantee legal assistance to every child involved in a migration process by providing free legal representation services<sup>70</sup>.

However, in practice when migrants first arrive in Brazil they are taken to the federal police<sup>71</sup> who are responsible for the first contact with children and their relatives, if they are accompanied.

The federal police's first measure is to gather as much information as possible to create an internal record on the profile and history of each child, including personal data and, psychological information such as family issues and the reason that made them leave their own country. At that stage, local public defenders are contacted as well as local shelters.

The designation of a public defender<sup>72</sup> to provide free legal assistance is rather common, but cultural and language differences can be a barrier in their communication. English or French is not usually spoken in Brazil and public officials who greet children may not be able to fully communicate with them.

### **2.5.2. Timing of designation of legal counsel and a guardian to migrant children**

The Inter-American Court of Human Rights establishes that children (under the age of 18) who are unaccompanied or separated from their family will be judicially assigned a responsible adult (guardian)<sup>73</sup>. In order to ensure the right to personal liberty, free and prompt access to legal assistance, to defend the child's interests, and to ensure their well-being an administrative or judicial proceedings involving children who are unaccompanied or separated from their families cannot be initiated until a guardian is appointed.

As soon as local public defenders and shelters are notified about a child's arrival, they must nominate a legal counselor and a guardian. The public defender is the "administrative tutor" of the child and responsible for providing free legal assistance. The shelter is responsible for nominating one of its employees to be the child's guardian. Although those who are appointed usually do not have special training, some shelters are developing educational programs for employees to enable them to deal with issues concerning immigrant children in risky situations.<sup>74</sup>

### **2.5.3. Appointed lawyers knowledge in trafficking or in working with migrant children victims**

In the case of unaccompanied children or children separated from their family the Committee on

---

<sup>70</sup> Cf. Advisory Opinion OC-21/14, August 19, 2014: Rights and Guarantees of Children in the context of Migration and/or in Need of the International Protection, Report of the Special Rapporteur on the Human Rights of Migrants, François Crépeau, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social, and Cultural Rights, Including the Right to Development, UN Doc. A/HRC/20/24, 2 April 2012, para. 38.

<sup>71</sup> Note that depending on the point of entry and considering the extent of Brazilian borders, not every child is seen by officials.

<sup>72</sup> A public defender is a public attorney appointed to represent people who cannot afford to hire one.

<sup>73</sup> Cf. Advisory Opinion OC-21/14, August 19, 2014: Rights and Guarantees of Children in the context of Migration and/or in Need of the International Protection; Committee on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin, *supra*, para. 33.

<sup>74</sup> Personal interview with Daniel Chiaretti (Federal Public Defender) conducted by the Mattos Filho's group of researchers on May 15, 2017.

the Rights of the Child states that the appointment of a competent guardian as soon as possible constitutes a very important procedural guarantee in ensuring their best interests. Lawyers from institutions that partner with the UN High Commissioner for Human Rights – UNHCR may also be contacted.

Brazilian public defenders, on the other hand, are not trained for those specific situations and the DPU –responsible for defending the rights of migrants and refugees at the individual, collective and extrajudicial levels - has a quite limited staff structure, lacking psychologists and social workers.

#### **2.5.4. Access to legal remedies against decisions affecting migrant children**

As mentioned above, it is expected that public defenders provide the child and his/her relatives with all necessary legal information.<sup>75</sup> The guardian should be sufficiently familiar with the interests and the situation of the child and be allowed to assist in all planning and decision-making processes, including appearance at immigration services and appeal hearings. The guardian should possess the expertise needed to take care of all the overarching needs of the child (i.e. legal, social...), acting in his/her best interest. Lastly, the guardian acts as a liaison between the child and any relevant bodies in ensuring that the child's legal, social, educational, health, psychological and material needs are met.

#### **2.5.5. Access to specialized victims services by migrant children**

In order to ensure adequate treatment of victims or potential victims of child trafficking, the Inter-American Court of Human Rights stipulates that States shall provide appropriate training to border staff, particularly in areas of child trafficking, so as to provide effective counseling and comprehensive child care.<sup>76</sup>

The Court establishes that it is necessary for the receiving State to determine, through appropriate proceedings, the individual child's best interests on a case-by-case basis. It is necessary and relevant to adopt comprehensive protection measures that basis. It is necessary adopt measures that: (i) enable access to health, both physical and psychosocial, (ii) are culturally appropriate and gender sensitive, (iii) provide a standard of consistent living with their physical and development through material assistance and support programs, particularly with regards to nutrition, clothing and housing; and (iv) ensure full access to education and equal conditions to Brazilian nationals.

Migrant children have full access to the very same services as Brazilian citizens, including shelters, legal assistance, health and education. However, specialized victims services are not a reality throughout the country, both for Brazilians citizens and migrants.

#### **2.5.6. Access to information on legal rights and available remedies in a language that is accessible to migrant children**

Migrant children, particularly those who are unaccompanied or separated from their families, have the right to be heard. In order to guarantee this right, states shall ensure that a translator or interpreter assists every child that does not understand or speak the language of the decision-making body. Therefore, the assistance of a translator or interpreter is a minimum and essential procedural guarantee to ensure compliance with the rights of the child to be heard and with the principle of the child's best interest. Without this, there could be no effective participation of the

---

<sup>75</sup> Cf. Advisory Opinion OC-21/14, August 19, 2014: Rights and Guarantees of Children in the context of Migration and/or in Need of the International Protection; Inter-American Commission on Human Rights (IACHR), Second Progress Report of the Rapporteurship on Migrant Workers and Members of their Families, OEA/Ser./L/V/II.111 doc. 20 rev., April 16, 2001, para. 99(d).

<sup>76</sup> Advisory Opinion OC-21/14, August 19, 2014: Rights and Guarantees of Children in the context of Migration and/or in Need of the International Protection, Article 10(2) of the 1951 Convention's Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime.



child in the procedure.<sup>77</sup>

Notwithstanding this, as mentioned in answer to question 2.3.2 above, in Brazil only a few social assistants or government employees master a foreign language in order to properly assist migrant children. There is also a lack of interpreters and translators, which creates a communication barrier sometimes obstructing the child's understanding of the proceeding and the whole process of protecting his/her rights.

### **3. Child protection system**

#### **3.1. Guardianship system**

##### **3.1.1. Brazilian guardianship system**

Brazilian law sets forth two different systems for children in general: guardianship and tutelage. Both are applicable to Brazilian and foreign children, given that there is no specific legal structure for migrant children, or children requesting refugee status. The ECA stipulates that the guardian must provide the child with financial, psychological and educational assistance<sup>78</sup>. In addition, it requires guardians to remedy the temporary/occasional<sup>79</sup> absence of parents.

Art. 33. A guarda obriga a prestação de assistência material, moral e educacional à criança ou adolescente, conferindo a seu detentor o direito de opor-se a terceiros, inclusive aos pais.

§ 1º A guarda destina-se a regularizar a posse de fato, podendo ser deferida, liminar ou incidentalmente, nos procedimentos de tutela e adoção, exceto no de adoção por estrangeiros.

§ 2º Excepcionalmente, deferir-se-á a guarda, fora dos casos de tutela e adoção, para atender a situações peculiares ou suprir a falta eventual dos pais ou responsável, podendo ser deferido o direito de representação para a prática de atos determinados.

Article 33. The guardianship requires financial, moral and educational support to the child or adolescent and confers the guardian the right to oppose against orders from the child and adolescent's parents and third parties.

§ 1º The guardianship is intended to effectively regulate the custody and it may be granted as a preliminary measure or within a tutelage and adoption proceeding, except in cases of adoption by foreigners.

§ 2º Exceptionally, the guardianship, will be granted apart from the tutelage and adoption proceeding, in order to attend specific situations or fulfill potential absence from parents or guardian, granting the right of representation to practice certain acts.

Tutelage, on the other hand, remedies the permanent lack of parents<sup>80</sup> (i.e. in case of death, or a judicial decision removing parental rights and duties). The duties of the tutor towards the child are the same as the guardian's, and the child should have a tutor or guardian until he/she turns 18 years old or is adopted.

Although Brazilian law provides for these two different systems, according to Judge Fadigas César<sup>81</sup>, courts usually apply the guardianship system to unaccompanied migrants or child refugee

---

<sup>77</sup> Cf. Case of Baena Ricardo et al. v. Panama. Merits, Reparations, and Costs. Judgment of February 2, 2001. Series C No. 72, para. 126, and Case of Vélez Loor v. Panama, supra, para. 141.

<sup>78</sup> Law No. 8,069/1990, article 33.

<sup>79</sup> Law No. 8,069/1990, article 33, paragraph 2.

<sup>80</sup> Law No. 8,069/1990, article 36.

<sup>81</sup> Personal interview with P. R. Fadigas César (State Judge) conducted the Mattos Filho's group of researchers on July 21, 2017.

seekers. In fact, very little practical difference exists between guardianship and tutelage and, as mentioned before, the officer of the housing entity that shelters unaccompanied children is usually appointed as guardian for all legal purposes.

### **3.1.2. Institution entrusted with the guardianship functions**

Housing institutions are operated by civil societies by means of public resources transferred under the Unified Social Assistance System (Sistema Único de Assistência Social - SUAS).

There are also local services that receive children with health or psychological illnesses called Basic Health Units (“Unidades Básicas de Saúde”). According to Judge Fadigas César<sup>82</sup>, it is common that unaccompanied children need psychological assistance prior to their social reintegration due to the traumatic conditions they experienced during their process of crossing Brazilian borders.

### **3.1.3. Guardianship monitoring system**

The ECA<sup>83</sup> stipulates that housing entities must be closely monitored by the Court of Infancy and Youth, the Guardianship Council, and the Public Attorney’s Office. All of which are jointly liable for the supervision of the institutions and the training of their professionals.

Guardianship Councils are responsible for guardianship and the rights of children and adolescents. This includes implementing measures of protection in relation to children and adolescents whenever there is a threat or violation of the ECA’s rights and referring to the Public Prosecutor Office administrative or criminal infringements against children and adolescents’ rights.

As for the monitoring of “guardianship shelters” (the word was removed from ECA, being substituted for “welcoming houses”), the councils must observe the quality and efficiency of the work developed in these houses. The councils are not able to issue a judicial decision, but it can bring suit before a judicial authority regarding the abuse of children rights.

Pursuant to the ECA, there shall be a Guardianship Council established in every Brazilian municipality. Such councils are composed of five members appointed by the local community for a mandate of four years. The candidates for a position of member of the council shall meet the following requirements: (i) possess recognized moral repute; (ii) be no less than 21 years of age; and (iii) reside in the relevant municipality.

If there is any problem in relation to the guardian, the local public defender or the prosecutor in charge of representing the child should file a petition to the court requesting the replacement of the guardian and indicating the reasons why the guardian should be replaced. The judge may dismiss the guardian and appoint another one, pursuant to article 164 of the ECA and the article 761 of the Brazilian Civil Code.

### **3.1.4. Access to complaint mechanisms**

Although there are no specific complaint mechanisms available to migrant children, the local Public Defender or Prosecutor should file a petition with the Court of Infancy and Youth reporting any human rights violation or any problem regarding the guardianship system.<sup>84</sup> Additionally, the ECA<sup>85</sup> sets forth that the Court of Youth and Infancy, the Public Defender’s Office, the Public Attorney’s office, and the guardians shall act in accordance with the child’s best

---

<sup>82</sup> Personal interview with by P. R. Fadigas César (State Judge) conducted by the Mattos Filho’s group of researchers on July 21, 2017.

<sup>83</sup> Law No. 8,069/1990, article 95.

<sup>84</sup> This information was provided by the Public Defender Daniel Chiaretti as being the common and non-institutional practice of the public servants. Such practice is not institutional and/or regulated by a code.

<sup>85</sup> Law No. 8,069/1990, article 95 to 97.

interests, in order to minimize any possible hardship a migrant children may face when dealing with the Brazilian guardianship system.

In São Paulo, the city that welcomes the largest number of refugee seekers in Brazil, the judicial branch has a special division for dealing with children and adolescents seeking refuge and foreign victims of international trafficking of humans, known as SANCAST. This body also undertakes regular visits and inspections of shelters in order to verify the health and well-being of the children.

### **3.2. Appointment of guardians for migrant children**

#### **3.2.1 Recruitment, placement and supervision of guardians**

As explained above, the ECA establishes that the Court of Youth and Infancy, the Guardianship Council, and the Public Attorney's office are jointly liable for the training of professionals and supervision of shelters. Considering the officer of the shelter is usually appointed as the child's guardian, he/she is under the supervision of such entities.

Judge Fadigas César<sup>86</sup> explained that the officer of the shelter should regularly submit an individual report of each child under his/her responsibility to the Court of Youth and Infancy. Nonetheless, such supervision may vary according to the public apparatus available in the state and/or municipalities. That is due the fact that some states and municipalities have better financial condition and better public apparatus. This situation leads to different conditions to shelter the migrant children and provide them greater access to public servants.

According to a Technical Orientation issued by the federal government in 2009 regarding sheltering children and adolescents under the Unified Social Assistance System (mentioned in response to question 3.1.2 above), shelter officers should have a college degree and prior experience in the area of child protection.<sup>87</sup>

In the event if any impropriety regarding the activities carried out by the guardian is identified, the local Public Defender or the Prosecutor in charge of representing the child should file a petition to the Court of Youth and Infancy to request the replacement of the guardian.

#### **3.2.2 Status of person accompanying a separated child**

As explained in the answer to question 3.1.1 above, the guardianship system stipulated in Brazilian law applies to unaccompanied children (i.e. a child that does not have his/her parents or guardian). Accordingly, if the child crosses Brazilian borders accompanied by someone who is not a relative or his/her parent, the Court of Infancy and Youth should analyze whether or not to appoint this companion as the child's guardian, with the Judge assessing if this would be in the child's best interests. Usually, considering that such person may be close to the child, the courts tend to appoint the companion as the child's guardian. However, if after hearing the case, the judge identifies that appointing the child's companion as the guardian may be harmful to the child's interests (i.e. the child was accompanied by a "coyote", a person that smuggled him/her into the country), he/she may appoint another person as the guardian (usually the officer of the housing entity as mentioned before), pursuant to a proceeding established under the ECA.

---

<sup>86</sup> Personal interview with P. R. FADIGAS CÉSAR (State Judge) conducted by the Mattos Filho's group of researchers on July 21, 2017.

<sup>87</sup> Available at: <http://www.sdh.gov.br/assuntos/criancas-e-adolescentes/programas/pdf/orientacoes-tecnicas.pdf>. Last access on August 10, 2017.

### **3.3. Other categories of persons /organs that may carry out guardianship functions**

Brazilian law does not establish that a separate guardianship system specific to migrant children. Indeed, the number of unaccompanied children that cross Brazilian boundaries is negligible. As a rule, relatives accompany children that migrate to Brazil and Brazilian law grants them the same treatment as Brazilian children when it comes to guardianship.

In the case of refugee children, the guardian will be his/her representative in any administrative proceeding filed with CONARE to obtain refugee status.

Currently, CONARE, CONANDA and the DPU are working on a joint draft of a normative resolution that is aimed at establishing procedures for preliminary identification and protection of unaccompanied children and adolescents that is best suited for their needs.

This draft normative resolution establishes that the DPU and the Guardianship Council should be notified whenever an unaccompanied child is identified, and prior to the commencement of the proceeding for settling the child's legal situation and granting him/her refugee status. However, it does not materially modify the current guardianship system provided for in the ECA.

### **3.4. Responsibilities and duties of guardians for migrant children**

#### **3.4.1. Rights and duties of guardians defined by law**

The guardian has a duty to provide material, moral, and educational assistance to the child or the adolescent. Pursuant to article 92, paragraph 2, of the ECA, the officers of the housing institution must also present a biannual report to judicial authorities regarding the situation of each child/adolescent under his/her care.

Additionally, the guardian has a duty to assist the child in administrative proceedings regarding refugee status, within the Refugees' National Council where the child's legal situation must be permanently settled. Therefore, he/she is responsible for interacting with the appointed Public Defender and taking part in decisions regarding the child's best interest.

If the guardian does not observe the child's best interest, or does not ensure the child's well-being, the Guardianship Council (an autonomous body responsible for ensuring compliance with the rights of the child and adolescent<sup>88</sup>) may seek their replacement. Therefore, guardianship may be revoked at any time, pursuant to article 35 of the ECA.

#### **3.4.2. Interactions between the guardian and the child's lawyer**

The guardian and the Public Defender appointed to represent the child/adolescent in relevant administrative/judicial proceedings only interact when a hearing is scheduled, either in administrative proceedings before CONARE, or in any other judicial proceeding regarding the legal situation of the unaccompanied child/adolescent<sup>89</sup>. There are very few public defenders specialized in migration, refugee and unaccompanied children issues. This hinders the forming of a closer relationship with the child's guardian.

#### **3.4.3. Responsibilities of guardians' compliance with art. 104 of the UN Guidelines for the Alternative Care of Children (2010)**

---

<sup>88</sup> A detailed description of the Guardianship Council can be found in response to question 3.5.1.

<sup>89</sup> Personal interview with Daniel Chiaretti (Federal Public Defender) conducted by the Mattos Filho's group of researchers on May 15, 2017.

The appointed guardian's responsibilities comply with art. 104 of the UN Guidelines for the Alternative Care of Children. They must ensure that the rights of the child are protected and that the child receives appropriate care, accommodation, education and development opportunities.

As mentioned in the answer to question 3.4.1 above, if the guardian does not act accordingly, the Guardianship Council may seek his/her replacement in order to guarantee the compliance with the rights of the child/adolescent established in articles 4, 7, 15 and 19 of the ECA. Among other rights, these articles set forth that all children and adolescents are entitled to health-care, proper education, and access to culture, leisure and sports.

### **3.5. Profile of guardians**

#### **3.5.1. Guardians' status**

Brazilian guardianship institutions are under the Unified Social Assistance System. The majority are non-governmental institutions operating in partnership with local governments that manage public financial resources. The directors of those institutions are usually designated as guardians.

As mentioned in response to question 3.2.1, according to a Technical Orientation issued by the federal government in 2009 regarding the sheltering activities of children and adolescents under the Unified Social Assistance System, shelter officers should have a college degree and prior experience in the area of child protection.<sup>90</sup>

In any event such entities, either governmental or non-governmental, must request the subscription (or accreditation) of their programs. Specifying the type of assistance they provide with the relevant City Council of Rights of the Child and Adolescent. Which in turn, must keep a record of such subscriptions and any changes, and keep the Guardianship Council and the judicial authorities of the relevant city informed of same. Ongoing programs must be re-evaluated by the City Council at least every two years in order to verify if the programs meet the criteria for the renewal of their operating license.

Pursuant to the ECA, entities assisting children and adolescents, either immigrant or Brazilians, are responsible for maintaining their own facilities, as well as planning and guaranteeing the protection of the children. They must also provide socio-educative programs such as: (i) guidance and family support; (ii) socio-educative support in the community; (iii) family placement; (iv) institutional sheltering; (v) provision of services to the community; and (vi) probation.

Finally, the existence of specific, permanent and autonomous bodies, called Guardianship Councils, are responsible for ensuring compliance with the rights of the child and the adolescent.

#### **3.5.2. Natural persons or entities carrying out the functions of guardian**

The director of the shelter is usually appointed as the child's guardian, but social assistants and others employees who work in the shelter can also be designated as guardians. Caregivers in shelters are responsible for the effective protection of the minors whereas the role of a guardian is to represent, before the Judiciary, the interests of the child or adolescent, (article 33 of ECA).

As a rule, the shelters in Brazil are private nonprofit entities, who enter into a cooperation agreement with the municipality in order to be accredited for the reception of vulnerable children, including their guardianship for legal matters.

---

<sup>90</sup> Available at: <http://www.sdh.gov.br/assuntos/criancas-e-adolescentes/programas/pdf/orientacoes-tecnicas.pdf>. Last access on August 10, 2017.

### 3.5.3. Guardians and conflict of interest

Pursuant to Brazilian law, the judge has discretionary powers to appoint the guardian. Therefore, the decision to consider conflict of interest when appointing a guardian is made by the relevant judge on a case-by-case basis.

Although there might be a conflict of interest because the directors of the placement institutions are also designated by the courts as guardians, it must be recalled that placement institutions and their heads are monitored by the Guardianship Councils.

“Article 97 of the ECA, sets out the following measures to entities that are in breach with obligations (regardless of civil and criminal liabilities of its managers and representatives):

[...]

II - to the non-governmental entities:

- a) caveat;
- b) suspension, entirely or partially of the transfer of public funds;
- c) interdiction of units or suspension of program;
- d) nullification of registry.

[...]

§ 2o The government legal entities and the non-governmental entities will be answerable for the damage their agents cause to children and adolescents, characterizing the infringement of social protection activities' guiding principles.”

### 3.5.4. Pre-qualification training of guardians

There are no specific rules or legislation regarding pre-qualification training for guardians. Usually, guardians are qualified social workers, who have had access to social assistance training, but this is not a rule.

However, some Guardianship Institutions provide pre-qualification training for their staff, as well as continuing education training.

### 3.5.5. Continuing education and guardians

Federal bodies, acting through the executive and judicial branches are required to jointly promote the continued qualification of the professionals who work, directly or indirectly, in institutional sheltering programs and programs regarding family placement of children and adolescents, including the members of the judiciary, Public Prosecutor's Offices and Guardianship Councils.<sup>91</sup>

Accordingly, there are several training programs provided, from time to time, by governmental bodies to such professionals. However, such trainings are *ad hoc* and do not necessarily reach the total number of Guardianship Institutions eligible for training.

### 3.5.6. Characteristics of these trainings

Considering that there is no formal and pre-established training offered to guardians, the length and topics covered vary and may involve the preparation of guardians in how to approach and manage the needs of children from different ages and countries. In addition, the initiative to promote such training may come from any governmental institution that provides refugee protection – for children of refugees generally.

### 3.5.7. Entities providing the trainings to guardians

There is no determined criteria regarding the topics or institutions that provide training. The

---

<sup>91</sup> Law No. 8,069/1990, pursuant to article 92, paragraph 3.

DPU's officer interviewed for this research stated that government institutions, such as the Public Prosecution Office, are responsible for offering and preparing such training.

### 3.5.8. Referral mechanism to ensure timely appointment of guardians

There is no referral mechanism to ensure a timely appointment of guardians since procedures concerning refugees are not guided by specific rules.

## 3.6. Child Bride

### 3.6.1. Legal age for marriage in Brazil

According to Brazilian law, a person achieves legal majority when he/she attains 18 years-of age,<sup>92</sup> following which that person may practice all acts of civil life, including getting married. Accordingly, as a rule, the legal age for marriage is 18 years-old.

The Brazilian Civil Code<sup>93</sup>, however, determines other means of a person achieving legal majority, permitting such persons to conduct actions as if he/she were of majority. In those circumstances, majority permits a person to obtain civil capacity, which allows:

- (i) emancipation, if the minor is older than 16 years-old;
- (ii) marriage prior to the age of 18 years-old;
- (iii) taking up public employment;
- (iv) graduation from higher education;
- (v) establishing a civil or commercial business, or an employment relationship, provided that the minor has his/her own financial resources.

Once civil capacity is reached, minors under the age of 18 can get married.

Further, under Brazilian law certain exceptions exist authorizing the marriage of minors between the ages of 16 and 18 without the minor attaining his/her civil capacity rights<sup>94</sup>. The Brazilian Civil Code<sup>95</sup> authorizes the marriage of “men” and “women”<sup>96</sup> between the ages of 16 and 18 if their parents, or their legal representatives, consent to the marriage.

However, despite the legal requirement of express parental consent<sup>97</sup>, parents may only refuse consent to their children's marriage in the event of a legally relevant reason. A judicial determination is available in the absence of parental consent. If a judge finds the reason for the parents' denial is not legally relevant or “unfair”, he/she may authorize the marriage of minors between the ages of 16 and 18<sup>98</sup>, even when the minor's future spouse is over 18.

Other exceptions to marriage-related adulthood are extremely controversial, particularly in the light of gender issues. These include the possibility of a person at a young age, even younger than 16, getting married in the event of pregnancy<sup>99</sup>; or to avoid the imposition or the enforcement of

---

<sup>92</sup> Law No. 10,406/2002, article 5. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/2002/L10406.htm](http://www.planalto.gov.br/ccivil_03/leis/2002/L10406.htm). Last access on: July 14, 2017.

<sup>93</sup> Law No. 10,406/2002, article 5. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/2002/L10406.htm](http://www.planalto.gov.br/ccivil_03/leis/2002/L10406.htm). Last access on: July 14, 2017.

<sup>94</sup> As outlined in the paragraph above, the marriage itself determines civil capacity for all purposes, including that minors who were not emancipated or graduated, for example, can get married.

<sup>95</sup> Law No. 10,406/2002, article 1,517. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/2002/L10406.htm](http://www.planalto.gov.br/ccivil_03/leis/2002/L10406.htm). Last access on: July 14, 2017. Article 1,517.

<sup>96</sup> Although the civil majority is 18 years old, the Brazilian Civil Code uses the terminology “men” and “women”, instead of “boys” and “girls”, to refer to people that marry between the ages of 16 and 18.

<sup>97</sup> Law No. 10,406/2002, article 1,518. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/2002/L10406.htm](http://www.planalto.gov.br/ccivil_03/leis/2002/L10406.htm). Last access on: July 14, 2017.

<sup>98</sup> Law No. 10,406/2002, article 1,519. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/2002/L10406.htm](http://www.planalto.gov.br/ccivil_03/leis/2002/L10406.htm). Last access on: July 14, 2017.

<sup>99</sup> Law No. 10,406/2002, article 1,520. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/2002/L10406.htm](http://www.planalto.gov.br/ccivil_03/leis/2002/L10406.htm). Last access

criminal sanctions.

Regarding the first exception, namely the marriage of people of young age because of pregnancy, please note that, from a criminal perspective, sexual intercourse with a person under the age of 14 is considered rape under the Brazilian Criminal Code, even if there is consent. The presumption of rape in such circumstance is absolute, and consent is not considered for the purpose of prosecution. The offender in this case is charged with the crime of Special Victim Rape<sup>100</sup>, which is a strict liability offence, and the victim's will is not relevant for the purpose of triggering prosecution<sup>101</sup>.

Concerning the second exception mentioned above, until 2005 the Brazilian Criminal Code contemplated the possibility of extinguishing sanctions for criminal offenses, such as rape, if the offender married the victim. Although this provision was removed from the legislation in 2005, the possibility for minors marrying under the age of 16 as a way to avoid the imposition of sanctions remains in the Brazilian Civil Code until the present day.

On this, in 2017, Bill of Law No. 7,199 was proposed within the Chamber of Deputies, to amend the provisions of the Brazilian Civil Code, abolishing the legal exceptions for child marriage.<sup>102</sup> The proposed new wording does not allow the marriage of children under 16 in any circumstance.

It is also important to note that it is possible to annul a marriage where one (or more) of the parties have not reached the minimum age of marriage (16 years). Additionally, the marriage of a person aged between 16 and 18 years may be annulled if it has not been authorized by their legal representatives.<sup>103</sup>

There are, however, limitations regarding marriage annulment, even in such situations. Firstly, only specific persons may seek the annulment. For marriages of children under the age of 16, annulment shall only be requested: (i) by the minor spouse; (ii) by their legal representatives; or (iii) by their ascendants.<sup>104</sup>

The minor spouse is authorized to seek annulment of his/her marriage because he/she has reached legal capacity, as mentioned above. The person who was once the minor's legal representative (before he/she reached civil capacity through marriage) and the minor's ascendants may seek annulment, if they have not consented to the marriage or if the minor is unable to seek it.

The Brazilian Civil Code<sup>105</sup> also specifies hypotheses in which the marriage can be annulled, which are: (i) if one of the parties has not reached the minimum age required to marry; (ii) if one of the parties was a minor of marriageable age but was not authorized by his/her legal representative; (iii) if there was defect of consent<sup>106</sup>; (iv) if one of the parties was incapable of expressing his/her consent in an unmistakable manner; (v) if the marriage was made by a mandatary and neither the mandatary nor the other party knew of the revocation of the mandate, provided the spouses did

---

on: July 14, 2017.

<sup>100</sup> Law No. 2,848/940, article 217-A. Available at: [http://www.planalto.gov.br/ccivil\\_03/decreto-lei/Del2848compilado.htm](http://www.planalto.gov.br/ccivil_03/decreto-lei/Del2848compilado.htm). Last access on: July 14, 2017.

<sup>101</sup> Law No. 2,848/940, article 225. Available at: [http://www.planalto.gov.br/ccivil\\_03/decreto-lei/Del2848compilado.htm](http://www.planalto.gov.br/ccivil_03/decreto-lei/Del2848compilado.htm). Last access on: July 14, 2017.

<sup>102</sup> CHAMBER OF DEPUTIES (CÂMARA DOS DEPUTADOS). Draft Law No. 7,119/2017. Available at: [http://www.camara.gov.br/proposicoesWeb/prop\\_mostrarintegra;jsessionid=584971432824DFDF22D9901254F0768F.proposicoesWebExterno1?codteor=1538663&filename=Avulso+-PL+7119/2017](http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra;jsessionid=584971432824DFDF22D9901254F0768F.proposicoesWebExterno1?codteor=1538663&filename=Avulso+-PL+7119/2017). Last access on: July 14, 2017.

<sup>103</sup> Law No. 10,406/2002, article 1,550. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/2002/L10406.htm](http://www.planalto.gov.br/ccivil_03/leis/2002/L10406.htm). Last access on: July 14, 2017.

<sup>104</sup> Law No. 10,406/2002, article 1,552. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/2002/L10406.htm](http://www.planalto.gov.br/ccivil_03/leis/2002/L10406.htm). Last access on: July 14, 2017.

<sup>105</sup> Law No. 10,406/2002, article 1,550. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/2002/L10406.htm](http://www.planalto.gov.br/ccivil_03/leis/2002/L10406.htm). Last access on: March 6, 2018.

<sup>106</sup> Within the terms of the Brazilian Civil Code.



not cohabit after the marriage; or (vi) for lack of power in the authority that celebrated the marriage.

It shall be mentioned that, if the marriage results in pregnancy, annulment to the marriage is not available on the grounds of the spouses' age.<sup>107</sup> It is important to emphasize this is applicable to cases when pregnancy happens after the marriage<sup>108</sup>.

In this sense, if one of the parties does not want to be married, he/she shall seek one of the other grounds described above to annul the marriage or divorce his/her spouse.

The marriage of teenagers between the ages of 16 and 18 years, when not authorized by their legal representative, can only be annulled if a lawsuit to terminate the marriage is filed within 180 days. This is to be done either by the minor when he/she reaches majority (counted from the date of their 18<sup>th</sup> birthday), or by his or her legal representatives (counted from the day in which the marriage occurred) or heirs at law (counted from the death of the minor).<sup>109</sup>

All the rules set out above are related to circumstances in which children or teenagers' marriage would be considered legal and authorized under Brazilian law. However, please note that most marriages of children and teenagers in Brazil are concluded without legal documents nor arranged procedures.

The non-governmental organization "Promundo"<sup>110</sup> conducted research<sup>111</sup> focused on under age marriage in Brazil. The country occupies the fourth place in the world, in absolute numbers<sup>112</sup>, of women who were married<sup>113</sup> before attaining the age of 15 years. Brazil is also the fourth country in the world, in absolute numbers<sup>114</sup>, of women married<sup>115</sup> before attaining the age of 18.

According to the results of this survey, in the Brazilian state of Pará there were a total of 4,506 girls and 1,407 boys, between the ages of 10 and 14, who were married. From these 4,506 girls, only 108 were legally married, which means that the remaining 4,220 had partners under a common law marriage. With respect to boys, from a total number of 1,407 only 102 were legally married.

Brazilian legislation defines common law marriage as the relationship between a man and a woman<sup>116</sup>, represented by public, continuous and lasting relationship, established with the purpose of constituting a family<sup>117</sup>. Such characteristics must be respected for a relationship to be considered a common law marriage.

---

<sup>107</sup> Law No. 10,406/2002, article 1,551. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/2002/L10406.htm](http://www.planalto.gov.br/ccivil_03/leis/2002/L10406.htm). Last access on: July 14, 2017.

<sup>108</sup> Law No. 10,406/2002, article 1,551. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/2002/L10406.htm](http://www.planalto.gov.br/ccivil_03/leis/2002/L10406.htm). Last access on: July 14, 2017.

<sup>109</sup> Law No. 10,406/2002, article 1,555, paragraph 1. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/2002/L10406.htm](http://www.planalto.gov.br/ccivil_03/leis/2002/L10406.htm). Last access on: July 14, 2017.

<sup>110</sup> TAYLOR, Alice; LAURO, Giovanna; SEGUNDO, Marcio; GREENE, Margaret. "She goes with me in my boat": *Child and Adolescent Marriage in Brazil*. Results from Mixed-Methods Research. Rio de Janeiro and Washington DC: Instituto Promundo & Promundo-US. July 2015. Available at: <https://promundo.org.br/recursos/ela-vai-no-meu-barco-casamento-na-infancia-e-adolescencia-no-brasil/?lang=ingles>. Last access on: September 26, 2017.

<sup>111</sup> The survey was conducted in 2014 in 2 states where official data indicated that the number of child marriages was significantly high: Maranhão and Pará. The survey was conducted with non-indigenous populations in the capitals of these states.

<sup>112</sup> 877,000 women between the ages of 20 and 24 years old who were married under the age of 15 (11%).

<sup>113</sup> "Married" refers to both girls living in legal marriages and in common law marriages.

<sup>114</sup> 3 million women between the ages of 20 and 24 years, were married before attaining the age of 18 (36% of the total of women married in this age group).

<sup>115</sup> "Married" refers to both girls living in legal marriages and in common law marriages.

<sup>116</sup> Although the legislation defines Common Law Marriage as such, it is important to point out that in a historical judgment of the Direct Action of Unconstitutionality (ADI) No. 4277 and the Argumentation of Noncompliance with Fundamental Principle (ADPF) No. 132, the Supreme Federal Court (STF) recognized, in May 2011, Common Law Marriage among people of the same sex

<sup>117</sup> Law No. 10,406/2002, article 1,723. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/2002/L10406.htm](http://www.planalto.gov.br/ccivil_03/leis/2002/L10406.htm). Last access on: March 6, 2018.

As a rule, if the legislation of the country where the couple is domiciled allows child marriage, this marriage will be accepted as existing and valid upon the couple's entry into the Brazilian territory. Therefore, if the religious marriage contracted by migrants was considered a marriage for all civil purposes under the legislation of the spouses country, it will be recognized as existing and valid in Brazil. On the other hand, if the religious marriage in the spouses country is not recognized as a marriage for all civil purposes, it should be considered as common law marriage in Brazil.

For the purposes of the Brazilian Constitution<sup>118</sup>, common law marriages must be considered as family entities.

### **3.6.2. Status of a child who arrives in Brazil accompanied by an adult spouse**

According to the Law of Introduction to Brazilian Standards<sup>119</sup>, the law of the country where the person is domiciled determines the general rules on capacity and family law. Therefore, as a rule, if the legislation of the country where the couple is domiciled allows child marriage, no matter the age of the child, this marriage will be accepted as existing and valid upon the couple's entry into the Brazilian territory.

However, if the couple lives in Brazil, the applicable Brazilian family law will prevail, which means that the same rules mentioned in answer to question 3.6.1. above should be taken into account, especially considering that, for all purposes, Brazilian special legislation does not differentiate migrant children from Brazilian children<sup>120</sup>.

Accordingly, to be effective in Brazil, guaranteeing spouses all related rights<sup>121</sup> and duties, the marriage must be in accordance with Brazilian family laws, as well as with the Brazilian public order<sup>122</sup>. Accordingly, the effectiveness of the marriage that took place abroad will always depend on public order and Brazilian norms.

As a rule, the legal age for marriage is 18, however there are plenty of exceptions to the general rule. Therefore, the effectiveness of a foreign marriage with a minor in Brazil requires compliance with at least one of the exemptions mentioned in answer to question 3.6.1. above. For further information on this matter, please refer to response on question 3.6.1.

### **3.6.3. Status of a child who is considered the ward of an adult spouse in the jurisdiction where the marriage took place**

Pursuant to Brazilian law, the ward as described in the question does not exist. However, under Brazilian legislation, a guardian, tutor or curator can exercise the activities of protection and civil responsibility for minors or civilly incapable people.

Guardianship<sup>123</sup>, as a general rule, is exercised by one or both parents over their minor children. Exceptions aimed at the benefit and protection of the child are contained within the Brazilian Civil Code.

Tutorship<sup>124</sup> occurs upon the death or declaration of absence of the parents of minor children, or

---

<sup>118</sup> CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL 1988 (CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL), article 226, paragraph 3. Available at: [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicaocompilado.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm). Last access on: March 6, 2018.

<sup>119</sup> Decree Law No. 4,657/1942, article 7. Available at: [http://www.planalto.gov.br/ccivil\\_03/decreto-lei/Del4657compilado.htm](http://www.planalto.gov.br/ccivil_03/decreto-lei/Del4657compilado.htm). Last access on: July 14, 2017.

<sup>120</sup> Personal interview with by Graziella Rocha (Human Rights researcher) concluded by the Mattos Filho's group of researchers on July 5, 2017.

<sup>121</sup> Including the attainment of civilian majority by means of marriage for spouses under 18.

<sup>122</sup> Decree Law No. 4,657/1942, article 17. Available at: [http://www.planalto.gov.br/ccivil\\_03/decreto-lei/Del4657compilado.htm](http://www.planalto.gov.br/ccivil_03/decreto-lei/Del4657compilado.htm). Last access on: July 14, 2017.

<sup>123</sup> Law No. 10,406/2002, article 1,583. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/2002/L10406.htm](http://www.planalto.gov.br/ccivil_03/leis/2002/L10406.htm). Last access on: July 14, 2017.

<sup>124</sup> Law No. 10,406/2002, article 1,728. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/2002/L10406.htm](http://www.planalto.gov.br/ccivil_03/leis/2002/L10406.htm). Last access

if the parents lose parental rights. In these events, if the parents did not appoint a tutor, the law<sup>125</sup> requires the appointment of a tutor, which can be: (i) the ascendants, with preference to the closest in degree over those farthest in degree; or (ii) collateral relatives, up to and including the third degree, with preference to the closest in degree over those farthest in degree and, within the same degree, to the older over the younger. The judge must choose among them the person who is a best fit to exercise the tutorship observing the interests of the minor.

In conclusion, under Brazilian law, as a rule, minors are subject to either guardianship, or tutorship.

On the other hand, parents who, for transitory or permanent reasons, cannot express their will (for example, persons suffering from a drug and alcohol dependency disorder or those who otherwise choose to neglect their parenting duties) may subject their children to curatorship.

As mentioned in the answer to question 3.6.1., marriage itself is a way for a person to achieve his/her civil majority<sup>126</sup> (if effective under Brazilian law<sup>127</sup>). The rules regarding children under 18 do not<sup>128</sup> contemplate the possibility of an adult spouse assuming responsibilities as guardian or tutor of the child spouse. Therefore, the status of a child as a ward of the adult spouse is not recognized in Brazil, as the 'child spouse' will be considered an adult.

Given that the general rules on capacity and family law are determined by the law of the country in which the person is domiciled, the migrant child/adolescent (who is domiciled in Brazil) could seek for annulment of the marriage. If the annulment is granted, the minor will not be considered a major for civil purposes anymore and, therefore, a guardian or a tutor will be designated for him/her.

#### **4. Family reunification**

##### **4.1. Family tracing:**

First, it is important to mention that unaccompanied children do not match the general profile of migrants and refugee's seekers who enter Brazil. As a rule, they are accompanied by relatives.

At most, it has been reported through primary sources of information that adolescents enter Brazil with false documentation, making it difficult to classify them as unaccompanied minors.

Given that this it is not a common or recurring situation, family tracing for unaccompanied children is not a priority in Brazil, and there is no provision in any law or guideline specifically promoting this issue.

However, there has been some reported cases, in which an unaccompanied child located in Brazil has been reunited with family members. The most well known case involved an 11-year-old Haitian boy who was a victim of human trafficking and was abandoned in a subway/underground station in the city of São Paulo in 2009.

His mother was living in French Guiana when she decided to hire a person to bring her children from Haiti. The person she hired was part of a people trafficking group and, for unknown reasons – probably because the mother did not have the amount of money demanded by the human-traffic-dealers (so-called coyotes) to take the child to French Guiana – abandoned the

---

on: July 14, 2017.

<sup>125</sup> Law No. 10,406/2002, article 1,732. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/2002/L10406.htm](http://www.planalto.gov.br/ccivil_03/leis/2002/L10406.htm). Last access on: July 14, 2017.

<sup>126</sup> Which, in principle, excludes the possibility of the person being considered incapable, since the child would be able to exercise his/her civil rights.

<sup>127</sup> Please refer to item 3.6.2.

<sup>128</sup> As a rule. However, a judge could decide otherwise, if he or she finds that it would be to the benefit of the child/teenager.

child in the subway/underground station in São Paulo upon arrival in Brazil.

In this case, the boy was taken to a shelter in São Paulo, triggering an investigation. The boy's mother was located and the trafficking network revealed.

Once the case was concluded, the Brazilian government issued an emergency passport for the boy, allowing him to travel to meet his mother in the French Guiana.

Unfortunately, some international bureaucracy<sup>129</sup> postponed the meeting with family members, but Brazil's attitude (in this case, in particular thanks to the initiatives of Judge Paulo Roberto Fadigas Cesar) in locating the boy's family is a good indication of how the government should act in similar cases.

In addition, the United Nation's refugee agency (UNHCR) works with national authorities and international and local organizations to develop projects which provide free birth certificates for refugees. These documents support access to public services, aim to avoid abuse and exploitation, and relevantly to facilitate access to family tracing and reunification.

#### **4.2. Reunification in Brazil or resettlement**

As mentioned in answer to question 4.1. above, there is no specific provision in Brazilian legislation for reunification in the country of origin, or a resettlement of the family in a third country.

However, there are normative provisions<sup>130</sup> for family reunification in case of Brazilian residents holding permanent or temporary visas, or even Brazilians citizens who have dependents abroad and wish to bring them to Brazil. In such cases, a visa can be requested and obtained for the special situation of family reunification.

If the "Caller"<sup>131</sup> is a Brazilian citizen, his/her dependent will receive a permanent visa. In turn, if the Caller is foreign, the "Called"<sup>132</sup> will be granted a temporary visa, compatible with the Caller's visa.

With respect to family reunification, the following persons are considered dependents, and, consequently, may live in Brazil under a visa issued for the purpose of family reunification<sup>133</sup>:

- (i) descendants under the age of 18, or any age, when it is demonstrated they are incapable of self-support;
- (ii) ascendants or descendants, provided that the need for protection by the interested party is demonstrated;
- (iii) brother, grandson, or great-grandson if orphan, unmarried and under 18 years-old, or any age, when proven incapable of self-support; and
- (iv) spouse or common law marriage spouse, in common law marriage, regardless of sex, Brazilian citizenship, or temporary or permanent foreigner in Brazil.

---

<sup>129</sup> The French government refused to issue a visa, claiming that this is not an official document for the European Union. At the same time, the Haitian government did not issue a new passport because the boy's family no longer had his documents. After more than 2 years of pressure from Brazilian diplomats, Haiti issued the boy's passport and he was able to reunite with his mother.

<sup>130</sup> MINISTRY OF FOREIGN AFFAIRS (MINISTÉRIO DAS RELAÇÕES EXTERIORES). Normative Resolution No. 108/2014. Available at: <https://sistemas.mre.gov.br/kitweb/datafiles/Cingapura/en-us/file/RN%20108-2014.pdf>. Last access on: July 18, 2017.

<sup>131</sup> Person that resides in Brazil and wishes to bring a dependent to live in Brazil.

<sup>132</sup> Dependent of a person residing in Brazil who is being called to live in Brazil with this person.

<sup>133</sup> MINISTRY OF FOREIGN AFFAIRS (MINISTÉRIO DAS RELAÇÕES EXTERIORES). Normative Resolution No. 108/2014. Available at: <https://sistemas.mre.gov.br/kitweb/datafiles/Cingapura/en-us/file/RN%20108-2014.pdf>. Last access on: July 18, 2017.

It is also relevant to note that in the cases described in items (i) and (iii) above the age considered for a family reunification visa application may be extended from 18 to 24 years, if the dependents are enrolled in an undergraduate or postgraduate course, provided that Brazilians are granted equal treatment in the foreigner's country of origin.

Therefore, if the Caller is in Brazil, family reunification will occur in the country, but there is no specific legislation concerning the situation of unaccompanied minors located in Brazil who have family abroad. Nonetheless, each situation should be analyzed on its own particularities, such as the case of the Haitian boy described in answer to question 4.1.

#### 4.3. Reunification with other relatives

As answered in questions 4.1. and 4.2. above, there are no special provisions for family reunification of unaccompanied minors located in Brazil.

The Ministry of Foreign Affairs may grant temporary or permanent visas for family reunification to dependents of Brazilian citizens, or to temporary or permanent foreigners in Brazil, however these cases include unaccompanied minors located abroad and not within the Brazilian territory.

Given this is not a common situation cases should be analyzed individually by Brazilian authorities, taking into account the best interest of the child.

#### 4.4. Grounds for refusal

In order to grant a visa for family reunification, the Ministry of Foreign Affairs shall take into account at least one of the following<sup>134</sup>:

- (i) that the Called does not have sufficient financial means to self-support and proof of regular remittance of funds for his/her livelihood and survival abroad;
- (ii) that the Called does not have descendants or collateral of first or second degree who can support him/her in his/her country of residence; and
- (iii) that the Called needs assistance due to illness confirmed by a medical report.

If the Called does not fit within any of the criteria mentioned above, the Family reunification visa may be denied.

Sickness insurance is not required for family reunification.

Nonetheless, the Caller shall provide, along with a specific application, documentation, which includes the following<sup>135,136</sup>:

- (i) two recent 3x4 colour photographs on a white background;
- (ii) certified copy of passport or equivalent travel document;
- (iii) proof of fee collection;
- (iv) a criminal record certificate issued in the Called's country of origin;
- (v) a declaration of non-conviction of any offense in Brazil or abroad;

---

<sup>134</sup> MINISTRY OF FOREIGN AFFAIRS (MINISTÉRIO DAS RELAÇÕES EXTERIORES). Normative Resolution No. 108/2014. Available at: <https://sistemas.mre.gov.br/kitweb/datafiles/Cingapura/en-us/file/RN%20108-2014.pdf>. Last access on: July 18, 2017.

<sup>135</sup> MINISTRY OF JUSTICE AND PUBLIC SECURITY (MINISTÉRIO DA JUSTIÇA E SEGURANÇA PÚBLICA). Entry and residence. Available at: <http://www.justica.gov.br/central-de-atendimento/estrangeiros/entrada>. Last access on: July 18, 2017.

<sup>136</sup> CONSULATE-GENERAL OF BRAZIL IN GENEVA (CONSULADO-GERAL DO BRASIL EM GENEBRA). Permanent visa, by way of family reunion. Available at: [http://genebra.itamaraty.gov.br/pt-br/visto\\_permanente\\_-\\_reuniao\\_familiar.xml](http://genebra.itamaraty.gov.br/pt-br/visto_permanente_-_reuniao_familiar.xml). Last access on: July 18, 2017.



- (vi) proof of relationship/kinship, or if the Caller and Called are married, a copy of the marriage certificate;<sup>137</sup>
- (vii) copy of identity document(s) and proof that the Caller has the financial means to support the Called; and
- (viii) declaration of commitment of maintenance, subsistence and exit of the national territory in favor of the Called, notarized by a notary or by a Consular officer.

All documents issued abroad shall be legalized by the Embassy or Consulate of Brazil in the country of issuance and translated into Portuguese by a certified translator.

It is noted that Brazilian federal police may conduct periodic visits to the Caller's residence to verify cohabitation with the Called, and to investigate the possible existence of irregularities, such as providing shelter to, or the employment of, undocumented foreigners.

If a Called violates this provision, he/she is subject to a penalty of a fine and the federal police might issue a notice ordering him/her to leave the country. Additionally, if the Called changes his/her address before the visit, he/she must report it to the Federal Police. If the address changes after the visit, he/she must notify the Ministry of Justice through the Federal Police within 30 days.<sup>138</sup>

If the request to stay is rejected, the Caller has a non-extendable period of 15 days, as from the date the decision is published in the Brazilian Official Gazette to request reconsideration, describing the facts and attaching all documents capable of provoking the modification of the decision<sup>139</sup>.

## **5. Placement of migrant children**

### **5.1. Temporary shelter/1<sup>st</sup> reception center**

The legal framework regarding the accommodation of asylum seekers is found within several international, national and regional legal instruments, each of which contains specific provisions referring to particular categories of persons.

However, the ECA guarantees rights for all children (people up to 12 years old) and adolescents (young people between 12 and 18 years old) in the country, including migrant children.

#### **5.1.1. Provision of shelter for children whose asylum claim is pending**

According to the United Nations High Commissioner for Refugees in Brazil - ACNUR, after the entrance in Brazil, the refugees, including children or adolescents, shall formalize their refuge application within the federal police, in compliance with the minimum requirements provided by the Article 1 of the Law 9474/1997. Meanwhile, social workers, volunteers or even the federal police itself, depending on how he/she entered the Brazilian territory (air, water or land) and on the structure of the place of entry, will assist the refugee in order to find shelter pending the refugee claim decision.

The placement of migrant children or adolescents is usually limited to shelters owned and maintained by civil society organizations. The only shelter owned and maintained by a

---

<sup>137</sup> It is likely that this provision could apply to a child. Yet, if an adult would travel abroad to contract a marriage with a minor and bring him/her to Brazil, it is foreseeable that this would be considered fraud (fraud to the international private law/ legal shopping) and that in this case, Brazilian authorities would most likely deny family reunification.

<sup>138</sup> CORREA DA LUZ, Idalmir et al. *O estrangeiro no Brasil: legislação e comentários*, São Paulo, 6. ed. 2012.

<sup>139</sup> NATIONAL SECRETARY OF JUSTICE (SECRETARIA NACIONAL DE JUSTIÇA). Ordinance No. 03/2009. Available at: <http://www.justica.gov.br/seus-direitos/migracoes/permanencia/anexos/portaria-no-03-de-05-de-fevereiro-de-2009-snj.pdf>. Last access on: May 20, 2017.



paramount that an interconnected and continuously updated database be created, which will allow more efficient data collection to inform public policies. Part of the difficulty no doubt lies in the fact that the organisation/administration for these entities is the responsibility of separate municipalities within separate Federal states.

### **5.1.3. Child-safeguarding policies established and implemented in the temporary shelters**

In accordance with the aforementioned technical guidelines on reception services for children and adolescents in Brazil, temporary shelters should provide qualified care, which must be consistent with the physical, psychological and social rights and needs of children and adolescents. For this purpose, shelter shall be offered to small groups in order to guarantee private spaces for storage of personal objects, and records about the life and development of each child and adolescent. Some temporary shelters segregate children and adolescents by gender and/or age, but this is not mandatory. The priority is usually to keep all family members together.

Despite such provisions, it is possible to identify several indicators that such policies are not adequately observed by all temporary shelters. The technical guidelines for children and adolescents reception services in Brazil recommend that institutions should seek to provide a shelter that is as close as possible to the concept of a family. Additionally, according to the IPEA survey<sup>145</sup>, only 17,5% (i.e. 103 of the shelters surveyed) met the residential resemblance criteria, however such survey was held in 2003 and has not been updated to date.

### **5.1.4. Easy accessibility for disabled migrant children**

According to the technical guidelines on reception services for children and adolescents in Brazil, all social-welfare network equipment must comply with accessibility standards in order to enable integrated services for disabled users.

However, according to the IPEA survey, the absolute majority of the shelters surveyed (i.e. 85,9%) did not provide specialized care. That is, they accommodate any child or adolescent in a situation of social or personal risk, importantly to avoid segregation of groups such as people with disabilities (“PWDs”) or HIV virus carriers. However, only 12,6% of the surveyed shelters had physical facilities adapted for PWDs, which indicates that, dependent on the shelter and the individual circumstances, they may face restriction in accessibility.

### **5.1.5. Temporary shelters and detention**

Host services are heterogeneous in Brazil and depend on the needs of different groups. Institutional shelters are aimed at providing temporary lodging before persons can move to independent accommodation in the community, return home (whether through forced repatriation or assisted voluntary return), or be resettled. The structure and size of these shelters, their target residents, as well as their capacity and management model varies. Institutional shelters usually provide food, health assistance, legal support, documentation support, vocational courses, Portuguese classes and other activities aiming at the integration of the migrants into the community, with an emphasis on the accomplishment of professional courses.

It is important to highlight that the shelters are open centers and should not be considered as permanent residences, but merely a transition space for people until a permanent solution is found. This is reflected in the rules applicable to shelters and the way these places are managed, as

---

[cCBjbmoiLCJtZHMgZXN0dWRhbSIsImNyaWFuXHUwMGU3YXMgYWRvbGVzY2VudGVzIl0=](https://www.mpsp.mp.br/portal/page/portal/infanciahome_c/acolhimento_institucional/Doutrina_abrigos/IPEA_Levantamento_Nacional_de_abrigos_para_Crianças_e_Adolescentes_da_Rede_SAC.pdf). Last access on: May 20, 2017.

<sup>145</sup> Levantamento Nacional de Abrigos para Crianças e Adolescentes da Rede SAC. IPEA- Instituto de Pesquisa Econômica Aplicada, 2003. Disponível em <[http://www.mpsp.mp.br/portal/page/portal/infanciahome\\_c/acolhimento\\_institucional/Doutrina\\_abrigos/IPEA\\_Levantamento\\_Nacional\\_de\\_abrigos\\_para\\_Crianças\\_e\\_Adolescentes\\_da\\_Rede\\_SAC.pdf](http://www.mpsp.mp.br/portal/page/portal/infanciahome_c/acolhimento_institucional/Doutrina_abrigos/IPEA_Levantamento_Nacional_de_abrigos_para_Crianças_e_Adolescentes_da_Rede_SAC.pdf)>



well as the material conditions in some of the shelters, which remain subject to extensive criticism.

### 5.1.6. Monitoring mechanism of shelters

In order to promote the quality of reception services, the ECA provides for supervision by requiring the enrollment of entities offering "shelter programs" with the Municipal Council for the Rights of Children and Adolescents ("Conselho Municipal dos Direitos da Criança e do Adolescente") and for each organisation to establish principles. Since they constitute services comprised by the social assistance network, reception services must also enroll with the Municipal Council of Social Assistance and be subject to its supervision. Currently there is no specific procedure for the monitoring/surveillance of shelters nor a specific authority responsible for carrying out such monitoring. Different authorities such as the police department, fire department, federal prosecutors, sanitary surveillance, etc., monitor the shelters on a case by case basis. No established standards exist for such visits although they are usually performed by public entities or organizations related to public entities.

Shelters are often supervised by human rights institutions, such as "Conectas Direitos Humanos". One famous example was the closure of a shelter in 2014 in Brasileia, a city in the State of Acre, on the Brazilian border with Bolivia, due to poor living conditions. More than 830 immigrants - almost all Haitians - were confined in a shed with capacity for only 200 people, in unhygienic conditions: sharing the use of only 10 bathrooms and 8 showers, where there was no distribution of personal hygiene products (such as soap or toothpaste), the sewage was running in poor conditions, under temperatures that reached 40 degrees Celsius.<sup>146</sup> The closure of the Brasileia shelter caused the spread of about 1,700 Haitians to several cities in Brazil. In São Paulo, approximately 200 immigrants arrived at Barra Funda and Tietê bus terminals on buses chartered by the government of Acre. Please note that the condition of the children and adolescents were not subject to a specific survey; however, in this shelter, there was no separation between gender, age and the health of the immigrants, which could indicate that any children in such shelter had their minimum rights not duly observed.

## 5.2. Placement of migrant children

### 5.2.1. Measures to prevent homelessness of migrant children

The ECA, supported by article 227 of the Brazilian Constitution, provides in several of its articles that every child has the right to grow up in a family environment (either natural or foster) and the State has the duty to promote the child's placement in a foster family (where necessary). The right to family encompasses the right to a home, which, to a certain extent, aims at preventing homelessness of children.

However, Brazil faces many challenges concerning the offering of placements not only for migrants and refugee seekers, but also for people in need in general. This also applies to the placement of children on the move. The Unified Social Assistance System<sup>147</sup> is present at all governmental levels (Federal, States and Municipalities) through representative councils: the National Council establishes basic ordinances and Municipal Councils implement them, thereby making initiatives made through ordinances accessible to the population. Within this system, the service of institutional hosts are responsible for preventing homelessness, not only of children but also for people in need in general.

---

<sup>146</sup> HUMAM RIGHTS CONECTAS (CONECTAS DIREITOS HUMANOS). Government closes shelter to Haitians in Brasileia. 2014. Available: <http://www.conectas.org/pt/acoos/politica-externa/noticia/17008-governo-fecha-abrigo-para-haitianos-em-brasileia>. Last access on: May 20, 2017.

<sup>147</sup> Law No. 8,742/1993.

## **5.2.2 Taking migrant children's views into consideration regarding their placement**

When an unaccompanied child on the move is identified, the institutional procedure requires taking the child to a children's home where the child will be assigned a guardian, who is generally a staff member of placement, until the child's legal situation is settled.

The child's situation will be settled by means of a judicial proceeding to determine guardianship and, if the child is a refugee, an administrative proceeding will run alongside the judicial proceeding regarding refugee status. The ECA and the Brazilian Civil Code apply to the judicial proceeding to determine guardianship, whilst Federal Law No 9,474/97 governs the administrative proceeding for refugee seekers.

As mentioned in the question above, the ECA establishes that every child has the right to grow up within a family, be it natural or a substitute/foster family. In the case of unaccompanied children on the move, they should be placed with a suitable family by means of a judicial proceeding, carried out in a specialized court to determine the guardianship of the child. In the meantime, until the final judicial decision, the director of the entity offering the institutional placement is considered the legal guardian.

Additionally, the ECA provides that within the judicial proceeding regarding the child's placement whenever possible, a multi-professional team shall first hear the child or adolescent, with a view to having the child's opinion duly considered and respected within the proceedings. Respect is to be had for the child/adolescent's stage of development and degree of understanding about the implications of the measure to be taken.

However, as the administrative proceeding for refugees is non-adversarial, a child does not have a say in those proceedings. This proceeding does not determine placement; it only grants refugee status. Guardianship and placement is determined through the separate judicial proceeding.

Generally, families are not kept apart, meaning that siblings are likely to have their legal situation jointly determined by the authorities. There are regional differences across Brazil and, in São Paulo, social policies are relatively more developed than in other parts of the country, even though the Unified Social Assistance System was designed to be effective across the whole country. In São Paulo, a mentoring program operates in some shelters in which volunteers support children's development, mental health and address issues such as family reunification/reintegration and the child's relationship with other people.

## **5.2.3. Types and criteria for placement of migrant children**

According to Resolution No. 109/2009 of the National Council of Social Assistance, there are four types of institutional placements for vulnerable and at-risk people:

Foster home ("Casa-Lar"): Residential unit in which at least one person or couple works as a resident educator/caregiver - in a home that is not their own, rather a public establishment - providing care to a group of children in need. This type of service seeks to stimulate a family like environment, and develop familial-like relationships to promote habits and attitudes of autonomy and social interaction with the community. With the structure of a private residence, it should receive technical supervision, be located in residential areas of the city and follow the economic standards of the community where it is placed. Further, Federal Law No. 7,644/87 provides a limitation of 10 children per foster home. These children are kept under the surveillance and responsibility of a "social-mother"; person responsible for educating and caring for children and adolescents - generally people underage - who for various reasons had their family ties weakened or broken (neglect, discrimination, abuse and exploitation) and therefore had to look for foster care. The social mother is selected under several legal restrictions and hired as a

normal employee to work within the foster homes as a resident caregiver.

Criteria for placement within these different foster units usually depend on age and gender sorting, however placement can be rather arbitrarily defined.

**Institutional shelter:** A residence found within residential areas of the community, offering a welcoming environment and institutional conditions, which are to comply with dignity standards. It should offer personalized service in small groups, favor the family and community life of the children and adolescents, and take advantage of equipment and services available in the local community.

**“Casa de Passagem”:** Immediate and emergency services for families, with professionals ready to receive persons in need at any time of the day or night. It works from the perspective of meeting the specific demand of the individual, verifying the situation presented, and carrying out the necessary arrangements for the definitive placement. The individual or family should be considered as in transit.

**Inclusive Residence:** Residences adapted for the disabled and/or dependent persons, with adequate physical facilities located in residential areas in the community. They must have a specialized team and appropriate methodology to provide personalized and qualified care, paying attention to both individual and collective needs.

Although institutional host services are well defined in the laws and regulations, the legal framework does not cover all cases, especially when it comes to smaller municipalities throughout Brazil. For instance, in the city of São Paulo there is special host placements for refugees, but in most other cities, even state capitals, the same infrastructure does not exist.

The ECA<sup>148</sup> provides that children should have preference in the provision and execution of public social policies. Even where there is not enough capacity to offer placements in all cases, children should be given priority.

Finally, NGOs and private institutions also offer assistance, notwithstanding that private orphanages have been abolished since the approval of the ECA. Private help to the Unified Social Assistance System is welcomed and encouraged and it is either exercised financially, via fund raising or donation, or through the offering of placements integrated to the public system. Creating an heterogeneous network of private and public efforts, supervised more intensively by the Municipal authorities known as “REDE” (translated as “network” from the Portuguese).

#### **5.2.4. Placement of siblings**

Whether siblings are placed together or not is a matter for the judicial proceedings mentioned above. Court decisions show that judges are, in their overwhelming majority, concerned about maintaining sibling groups together. This fact was confirmed by Judge Fadigas Cesar.<sup>149</sup>

In an attempt to avoid the definitive disruption of fraternal bonds, the ECA provides<sup>150</sup> that sibling groups should be placed together in foster care, or guardianship, except when there is a risk of abuse or another situation that fully justifies an alternative placement. Pursuant to article 33 of ECA, guardianship is understood as the parents’ family responsibility over the child and, in the absence of those, by a third-person assigned as such by a judge. Placement and guardianship are not automatic; the director of the shelter institution will only be considered a guardian after a

---

<sup>148</sup> Law No. 8,069/1990, article 4, line “c”.

<sup>149</sup> Personal interview with P. R. FADIGAS CÉSAR (State Judge) conducted by the Mattos Filho’s group of researchers on July 21, 2017.

<sup>150</sup> Law No. 8,069/1990, section 28, paragraph 4. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/L8069Compilado.htm](http://www.planalto.gov.br/ccivil_03/leis/L8069Compilado.htm). Last access on: May 16, 2017.

formal judicial process is undergone in order to decide over the child's guardianship.

Similarly, the ECA provides<sup>151</sup> that entities developing family or institutional care programs should be aware of the principle of non-separation of sibling groups.

### 5.2.5. Transition process offered to migrant children who reach the age of 18

Brazilian law does not differentiate between Brazilian children and migrant children regarding leaving care. When a teenager reaches majority, i.e. 18 years-old, he/she must leave the shelter. It is noted however, that this is not a sudden process and the law provides that shelters need to gradually prepare the teenager for his/her departure.

The shelter must recommend it even before reaching the age of majority the adolescent strengthens his/her autonomy through his/her inclusion in professional qualification programs and insertion in the labor market as an apprentice or worker<sup>152</sup>.

At the same time, their gradual preparation for termination of the time in the shelter should be sought before<sup>153</sup> and after reaching the age of majority. Whenever possible, the shelter should also maintain partnerships with the so-called "repúblicas", independent living centers that functions as a transition space in the acquisition of autonomy and independence, aimed at those who reach the age of majority in the shelter.

According to Judge Fadigas, it is very common for adolescents to evade the shelter prior to reaching majority since the process of termination is a difficult passage for them. When reaching majority, though, these young adults may be allocated places in shared flats (so-called "repúblicas") with other people in similar situations<sup>154</sup>.

In order to be eligible for the benefit, the young adult must be between 18 and 21 years old and find himself in a situation of vulnerability, confronted to personal and social risk, with broken or extremely fragile family ties and no means to self-subsistence. The service is focused on the reception of young people in the process of release from reception services for children and adolescents who have reached the age of majority, but who have not yet achieved autonomy, and may also be aimed at other young people in need of this service. In this manner, young university students who meet the above criteria can make use of the scheme.

### 5.2.6. Informal care

Brazil does not have an informal care system, all types of shelters are overseen by competent authorities. For further information, please refer to our response in 5.2.3.

## 5.3. Detention/Retention

Pursuant to article 123 of the new migration law detention for migratory reasons in Brazil is prohibited. However, the regulation decree recently published (decree nº 9.199/2017) provides just the opposite: the possible arrest of "precluded" immigrants. It is a vague concept that can criminalize both an immigrant with actual criminal issues and an immigrant who just does not

---

<sup>151</sup> Law No. 8,069/1990, section 92, section V. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/L8069Compilado.htm](http://www.planalto.gov.br/ccivil_03/leis/L8069Compilado.htm). Last access on: May 16, 2017.

<sup>152</sup> ASSIS, S.G, e FARIAS, L.O.P. (Orgs.). Levantamento nacional das crianças e adolescentes em serviço de acolhimento. Huditec: São Paulo, 2013.

<sup>153</sup> Adolescents are entitled to stay in a shelter until the age of 18. However, their adaptation may be completed before or after reaching the age of majority.

<sup>154</sup> Personal interview with P. R. Fadigas César (State Judge) conducted by the Mattos Filho's group of researchers on July 21, 2017.

have all the necessary documentation or does not prove resources for their subsistence in the country.

Regarding children and adolescents in conflict with the law, as mentioned thorough the research, the Brazilian Constitution requires equal treatment for national and migrant individuals, in particular relating to the fundamental rights secured by article 5.

There is no specific treatment applicable to migrant children regarding detention/retention rules; the same rules in force for Brazilian children apply to migrant children.

The ECA deals with detention and retention of children in general terms, and Law No. 12,594, dated January 18, 2012, standardizes the enforcement of correctional measures applicable to children.

The legal framework provides that municipalities are responsible for implementing, coordinating and maintaining the infrastructure needed to adequately enforce any correctional measures, vis-à-vis children and adolescents.

In Brazil, unaccompanied migrant children will be sent to care shelters and the authorities will seek to locate their relatives or, if not possible, will keep the children in these shelters until their situation is solved (complete majority, obtaining of information about the family and other situations).

If accompanied by parents, children and teenagers will not be separated from their families. The family will be welcomed in a facility which purpose is to provide shelter to people in need.

It is further noted that the relevant legislation addresses acts committed by children that would classify crimes if committed by an adult, but it is punishable under the ECA with correctional measures rather than with criminal penalties.

In accordance with the ECA, only teenagers (individuals 12 to 18 years old) are subject to correctional detention/retention. Although the questions and the answers will refer to *children*, in the present section, the term should be understood to mean *teenagers*.

In the State of São Paulo the institution responsible for managing and coordinating' detention and retention centers in the municipality is called Fundação-CASA.

Finally, please note that no case involving migrant children being retained or detained was identified in our research. Accordingly, the review here is merely hypothetical.

### **5.3.1. Detention of migrant children as a measure of last resort**

The detention of teenagers within an educational facility, establishment in which the social reintegration of the teenager is sought through educational measures, depends on the seriousness of the violation or the recurrence of other serious violations.

The ECA<sup>155</sup> expressly establishes that correctional measures for violations of its rules are as follows: I - reprimand; II - obligation to repair the damage; III - service to the community; IV – assisted freedom; V – placement into a regime of semi-liberty; VI - serving time in an educational facility.

The maximum period for detention within an educational facility is 3 years, with mandatory departure when the adolescent reaches 21 years of age.

---

<sup>155</sup> Law No. 8,069/1990, section 112.

### 5.3.2. Circumstances for which detention is considered

Detention/Retention in an educational facility is applicable in the following cases: I – Violations committed with violence or serious threat; II - Repeated serious violations; III – Repeated and unjustifiable noncompliance of correctional measures previously imposed (in this case, the detention/retention is limited to 3 months).

### 5.3.3. Segregation of children from adults in detention centers

Yes. The ECA<sup>156</sup> requires detention/retention in facilities exclusively for children, and they should not mix with adults.

### 5.3.4. Types of facilities where migrant children are detained

Given that Brazilian laws do not treat Brazilian children and migrant children differently, migrant children might be subject to the correctional measures contemplated in the ECA that are applicable when an offence is committed by the child, as detailed in the above sections.

Pursuant to the ECA's provisions, educational facilities should receive children with the assistance of qualified professionals, enabling the development of pedagogical activities to pursue enhancement of the child's social life. However, considering the insufficient structures available and a lack of qualified professionals<sup>157</sup>, such provisions are not adequately complied with in practice.

### 5.3.5. Information about the whereabouts of the child provided to parents/legal guardians

According to the ECA<sup>158</sup>, parents must be informed about the detention/retention of their children and the location of the detention/retention.

### 5.3.6. Safeguarding measures to ensure that accompanied children in detention are not separated from their siblings/relatives/guardians

From a legal perspective, the ECA determines that institutions responsible for hosting children (see placement of migrant children above) should prevent siblings from being separated from each other.

A similar provision establishes that institutions responsible for correctional measures involving detention/retention should undertake efforts to maintain detained or retained children as close as possible to their families.

Article 35, IX, of Law No. 12,594/2012 provides that correctional measures should be guided by a series of principles, including strengthening of ties with the children's family and the community.

In addition, every children detained or retained is entitled to an Individual Attendance Plan ('IAP'). The IAP establishes how correctional measures will be executed. The IAP must provide activities that integrate and support the family in the process, as well as ensuring that the family participates in its enforcement. In the event of a child committing a violation that results in a child being taken to an educational facility, that child will inevitably be separated from his/her family for a certain time.

---

<sup>156</sup> Law No. 8,069/1990, article 123.

<sup>157</sup> PUBLIC PROSECUTORS' NATIONAL COUNCIL (CONSELHO NACIONAL DO MINISTÉRIO PÚBLICO). Relatório da infância e juventude – Resolução nº 67/2011: um olhar mais atento às unidades de internação e semiliberdade para adolescentes. Brasília: Conselho Nacional do Ministério Público, 2013. Available at: [http://www.cnmp.mp.br/portal/images/stories/Destaques/Publicacoes/Relat%C3%B3rio\\_Interna%C3%A7%C3%A3o.PDF](http://www.cnmp.mp.br/portal/images/stories/Destaques/Publicacoes/Relat%C3%B3rio_Interna%C3%A7%C3%A3o.PDF).

Last access on: September 05, 2017.

<sup>158</sup> Law No. 8,069/1990, section 107.



### 5.3.7. Access to a legal counsel by migrant children placed in detention/retention centers

Children have access to legal counsel in proceedings which might lead to any kind of detention or retention measures. In this regard, the ECA<sup>159</sup> expressly establishes that children must receive legal assistance.

Furthermore, item IV of section 111 grants free legal assistance if the minor is not able to afford attorney fees. The Public Defender's Office ("Defensoria Pública") of each Brazilian state is responsible for assuming the legal assistance of children in such circumstances.

In the event a minor is caught committing an illegal act that requires detention, the competent judiciary authority must be informed within 24 hours. If no attorney has been appointed to the case, the judge must send the case to the Public Defender's Office to ensure the provision of proper legal assistance.<sup>160</sup>

All the provisions addressed above are applicable to all children in general, including migrant children.

### 5.3.8. Available remedies to challenge the legality of the deprivation of liberty

As mentioned previously, current legislation grants children legal assistance in order to safeguard due process of law. Also as already mentioned, if the detention/retention of the child was not determined by a court decision (i.e. the child is caught committing an illegal act), the case should be immediately reported to the court so that a judge can analyze the legality of the measure.

Nevertheless, even where a child is already being formally prosecuted for a violation of the law, legal assistance is assured at all times. Therefore, the child is entitled to file appeals and may challenge all correctional measures requested.

According to the ECA children and adolescents have the express right to petition any public authority<sup>161</sup>, on any matter.

### 5.3.9. Existence of child-safeguarding policies established and implemented in the detention/retention centers

The ECA<sup>162</sup> determines that correctional measures imposed on children and adolescents, especially in the case of detention/retention, must be enforced in facilities exclusively dedicated to such purposes that segregate children by age, physical constitution and the type of illegal act committed.

It also lists all rights that children in detention/retention facilities are entitled to<sup>163</sup>, including access to adequate sanitation services and hygiene, and the right to receive whatever is needed to ensure proper sanitation services and personal hygiene. Section, 125 determines that the State is responsible for the physical and mental integrity of the teenager detained/retained.<sup>164</sup>

Although there are numerous normative standards, there are several reported events indicating

---

<sup>159</sup> Law No. 8,069/1990, section 111, III.

<sup>160</sup> Such proceeding is established Law-Decree No. 3.689/1941, article 306, which is applicable to cases involving children in view of article 226 of Law No. 8,069/1990.

<sup>161</sup> Law No. 8,069/1990, section 124, II, although there may be applicable conditions or requirements for the petition right exercise, ECA provision assures the petition right to any public authority.

<sup>162</sup> Law No. 8,069/1990, section 123.

<sup>163</sup> Law No. 8,069/1990, section 124.

<sup>164</sup> The rights and duties of the State are also expressed in Ordinance No. 224/2012 issued by Fundação-CASA, which has a complaint/reporting bureau.



that such provisions are not adequately complied with by Brazilian authorities.

For illustrative purposes, on May 13, 2017, one of the detention facilities (so called “Fundação-CASA”) was reportedly invaded. Employees were made hostages and the invasion ended with the release of 12 detained/retained individuals (as reported by the newspaper *Folha de São Paulo*<sup>165</sup>).

On November 21, 2016, 9 female teenage detainees stated they were tortured at one the institutions of Fundação-CASA<sup>166</sup>. At that time, it was reported that the officers from the institution physically attacked the teenagers, who were forced to stay without any proper access to sanitation and hygiene facilities.

In 2014, the Public Prosecutor’s Office (“Ministério Público”) initiated an investigation to review Fundação-CASA budget expenditures.

Practically, Fundação-CASA institutions do not meet the normative parameters for adequate detention/retention centers.

### **5.3.10. Easy accessibility provided to disabled children**

Once again, normative provisions grant disabled children easy access when in detention/retention centers. Section 60, III, of Law No. 12,594/2012, determines that special care should be taken when dealing with disabled children under the enforcement of correctional measures.

Ordinance No. 224/2012 issued by Fundação-CASA contemplates the right of the disabled children to receive specialized treatment, however it does not specify how such specialized treatment should be provided. Nor does it clarify the procedures or actions that should be taken with respect to access for disabled children.

## **6. Access to fundamental rights**

### **6.1. Education**

#### **6.1.1. Equal access by migrant children to education**

Brazil is a signatory to the Geneva Convention of 1951, which guarantees the right to education, without discrimination, to all children regardless of their legal status. The same Convention stipulates that Contracting States shall provide refugees the most favorable treatment, that is no less favorable than that provided to foreigners in the same circumstances, with respect to education, other than elementary education; and in particular, access to school, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges, as well as award of scholarships.

In addition to the protections within the international instruments, the ECA guarantees equal treatment to all children in the country aged up to 12 years old, and teenagers aged between 12 and 18 years old, regardless their place of birth<sup>167</sup>. Within the Brazilian educational system, the ECA guarantees without discrimination, the right to education, seeking the full development of the individual, preparation for citizenship and qualification for work (articles 3 and 53)<sup>168</sup>.

---

<sup>165</sup> CAVALCANTI, Tatiana. Grupo invade unidade da Fundação Casa em SP e resgata 12 internos, *Folha de São Paulo*, São Paulo, 2017. Available at: <http://www1.folha.uol.com.br/cotidiano/2017/05/1883883-grupo-invade-unidade-da-fundacao-casa-em-sp-e-resgata-12-internos.shtml>. Last access on: July 15, 2017.

<sup>166</sup> CAVICCHIOLI, Giorgia; GUIMARÃES Juca. Nove adolescentes denunciam tortura na Fundação Casa à Defensoria Pública, *R7*, 2016. Available at: <http://noticias.r7.com/sao-paulo/nove-adolescentes-denunciam-tortura-na-fundacao-casa-a-defensoria-publica-22112016>. Last access on: July 15, 2017.

<sup>167</sup> Law No. 8,069/1990, article 2. “For the purposes of this Act, a person is considered a child if he/she is up to 12 years of age, and an adolescent if he/she is between 12 and 18 years of age.”

<sup>168</sup> Law No. 8,069/1990, article 3. “The rights enunciated in this Law apply to all children and adolescents, without

In this regard, the Brazilian legal framework establishes that migrant children, regardless of their legal status, have the same rights and access to education conditions as Brazilian children. The responsibility of the State to provide free access to education applies to migrant children as well. The age of compulsory education is between the age of 4 though the age of 17.<sup>169</sup>

School enrolment of migrant children is not considered an issue in Brazil. School enrolment is ensured to migrant children, even to those who do not have all necessary documentation for their enrollment. Graziella Rocha<sup>170</sup> - researcher interviewed for this report<sup>171</sup> – described a case in Rio de Janeiro, in 2013, in which a school denied a migrant child enrolment because the registration form did not have the proper field to enter a passport number instead of the Brazilian identity card number (“Registro Geral – RG”). After a complaint was filed, the institution was required to include the mentioned field in order to enable school enrollment with foreign documents. Opinions issued by public authorities state that schools may not prevent the enrolment of migrant children on the grounds of absence of documentation.<sup>172</sup>

However, at both the state and municipal levels the Brazilian government does not require mandatory inclusion of specific educational planning or courses within the educational system for migrant children that could assist their training and mitigate difficulties, such as language and cultural barriers.

There are, however, some initiatives led by civil society organizations that promote initiatives to develop appropriate pedagogical work, which fit migrant children’s needs.

In March 2017, a group of professors from the Pontifícia Universidade Católica de São Paulo held a seminar open to all public school teachers to discuss alternatives in dealing with migrant literacy and teaching<sup>173</sup>.

Furthermore, the Universidade Estadual do Rio de Janeiro offers a course called “Portuguese for Refugees” with course material prepared by a team of teachers. The institution also promotes a series of research and academic extension courses for refugee migrants.<sup>174</sup>

A non-governmental organization, “Missão Paz”, in partnership with volunteer teachers, promotes free Portuguese classes for migrants in São Paulo, especially for students from Congo, Colombia, Haiti, Nigeria, Ecuador, South Africa and Senegal. The goal of the project is to be a host to refugees, sharing cultural knowledge and aspects of their native languages.<sup>175</sup>

According to Leda Rodrigues<sup>176</sup>, a professor of Fundamentals of Education at the Universidade

---

discrimination of birth, family status, age, sex, race, ethnicity or color, religion or belief, disability, personal development and learning condition, economic condition, region and place of residence”. ; article 53. “The child and the adolescent have the right to education, aiming at the full development of their person, preparation for the exercise of citizenship and qualification for work (...)”.

<sup>169</sup> Federal Constitution, article 208, section I.

<sup>170</sup> PhD and Master in Social Policy from the Universidade Federal Fluminense. She is active in the development of studies and research in the defense and promotion of human rights, specialized in slave labor, migrations and refuge.

<sup>171</sup> Personal interview with Graziella Rocha (Human Rights researcher conducted by the Mattos Filho’s group of researchers on July 5, 2017.

<sup>172</sup> Legal Opinion CME No. 16/04 – CEB. Available at:

<http://www.prefeitura.sp.gov.br/cidade/secretarias/educacao/cme/pareceres/index.php?p=958>. Last access on: March 08, 2018.

<sup>173</sup> OLIVEIRA, Cida de. Crianças imigrantes enfrentam barreira da língua e despreparo da rede de ensino, *Rede Brasil Atual*, 2016. Available at: <http://www.redebrasilatual.com.br/educacao/2016/02/alem-da-barreira-da-lingua-criancas-imigrantes-enfrentam-o-despreparo-da-rede-de-ensino-7023.html>. Last access on: June 8, 2017.

<sup>174</sup> ONU. *UERJ and Fundação Casa Rui Barbosa are the new members of the Cátedra Sérgio Vieira de Mello*, 2017. Available at: <https://nacoesunidas.org/uerj-e-fundacao-casa-rui-barbosa-sao-novas-integrantes-da-catedra-sergio-vieira-de-mello/>. Last access on: June 9, 2017.

<sup>175</sup> ALL FOR EDUCATION CAMPAIGN (CAMPANHA TODOS PELA EDUCAÇÃO). *The immigrants’ teacher*. Available at: <http://www.todospelaeducacao.org.br/reportagens-tpe/35495/a-professora-dos-imigrantes/>. Last access on: June 8, 2017.

<sup>176</sup> OLIVEIRA, Cida de. Crianças imigrantes enfrentam barreira da língua e despreparo da rede de ensino, *Rede Brasil Atual*, 2016. Available at: <http://www.redebrasilatual.com.br/educacao/2016/02/alem-da-barreira-da-lingua-criancas-imigrantes->

Católica de São Paulo (PUC-SP), Brazil faces a reality where the education of migrants, especially those from Bolivia, Peru and Paraguay, becomes the responsibility of civil societies. According to her, migrants in a better economic situation, such as Chinese, Japanese, European and American migrants, tend to enroll their children in private schools, which provide better conditions for social inclusion than that of public schools.

### **6.1.2. Access to primary and secondary education by migrant children whatever their status**

Migrant children, regardless of their status, have equal access to primary and secondary education. The ECA does not distinguish migrant from Brazilian children and imposes on the State the obligation to provide access, free of charge, to primary and secondary education, including course material, transportation, food and health assistance.

The Brazilian Ministry of Education (“Ministério da Educação”) is responsible for developing the national education policy. Basic school is mandatory in Brazil and it is divided into different and progressive stages, as follows: the first step is education for children at the age of 4 or older. After that, elementary school for children between the ages of 6 and 14. Finally, high school is for children from 15 to 17 years old, which is the maximum age legally provided in the Federal Constitution for compulsory education.

After basic school is concluded, several public and private universities offer higher education (college), which is not a state responsibility, and focuses on a group of individuals who are older than the group protected by the ECA.

Childhood education focuses on physical, psychological, intellectual and social development of the child.<sup>177</sup> During elementary school, students must learn how to read, write and mathematical skills, in addition to learning about the nature, social environment, political system, technology, arts and the basic values of society and the family<sup>178</sup>. High school education is designed to consolidate the knowledge acquired in elementary school, preparing the student for work and for life in society<sup>179</sup>.

Despite the fact that Brazilian law ensures migrant children the right to enroll and access public education, as well many other human rights, the lack of effective public policies to guarantee those rights is a predominant reality. Unfortunately, although migrant children are entitled to be enrolled in Brazilian schools the country lacks the necessary infrastructure and assistance in order to effectively integrate migrant children in the educational process. For instance there is a shortage of didactic books in other languages and professionals trained to assist migrant children and address language barriers issues.

### **6.1.3. Access to education opportunities available to Brazilian children, including to higher education**

Migrant children regardless of their status have access to the same educational opportunities that

---

[enfrentam-o-despreparo-da-rede-de-ensino-7023.html](#). Last access on: June 8, 2017.

<sup>177</sup> Law No. 9,394/1996, article 29. “the integral development of the child up to 5 years of age in his/her physical, psychological, intellectual and social aspects, complementing the action of the family and the community”.

<sup>178</sup> Law No. 9,394/1996, article 32, sections I, II, III and IV. “Compulsory elementary education, which lasts for 9 years is free of charge in the public school, shall aim at the basic education of the citizen through: the development of the capacity to learn, having as basic means the full mastery of reading, writing and calculation; the understanding of the natural and social environment, the political system, technology, the arts and the values on which society is founded; the development of the learning capacity, with a view to acquiring knowledge and skills and forming attitudes and values; the strengthening of family ties and mutual tolerance on which social life is based.”

<sup>179</sup> Law No. 9,394/1996, article 35. “Secondary education, the final stage of basic education, with a minimum duration of 3 years, will have the following objectives: the consolidation and deepening of the knowledge acquired in elementary education, allowing the continuation of studies; the preparation for work and citizenship of the student (...); the improvement of the student as a human being (...); the understanding of the scientific-technological foundations of productive processes.”

Brazilian children have (please see answer to question 6.1.1). They may enroll in school without proper documentation and attend the same classes as Brazilian children.

Migrants and refugees can apply for a federal program of direct income transfer, which is intended for families in situation of poverty, called "Bolsa Família".<sup>180</sup> In order to be part of the program it is necessary to fulfill certain requirements, such as presentation of the certificate of school attendance for children or dependents.<sup>181</sup>

The research did not identify any evidence that the Brazilian Government is able to provide specific facilities and assistance to migrant children in order to pursue higher education, (besides the mandatory basic education - primary and secondary education, elementary education and high school), as a measure of inclusion, or language development programs, or tutoring classes.

#### **6.1.4. Access to education after arriving at an age when education is no longer compulsory in Brazil**

As responded in answer to question 6.1.2, mandatory basic education in Brazil covers ages up to 17 years old. During this period, the government has the obligation to offer this fundamental service and families have the obligation to enroll their children in educational institutions.

Once the child turns 18 years of age, he/she is no longer considered a teenager by Brazilian law, and education is no longer compulsory. From this moment on, several Brazilian public and private institutions offer higher education to candidates who successfully pass an exam, which is mandatory for all students, including Brazilians.

A well-known higher education initiative for migrants (especially Haitians) involves inclusion programs in the selective process of some public and private universities. In order to encourage social inclusion of migrants Universidade Federal de Santa Maria (UFSM), Universidade Federal da Fronteira Sul de Santa Catarina (UFRGS), among others, provide special entrance conditions.<sup>182</sup>

Furthermore, Universidade de Minas Gerais (UFMG) began accepting migrant enrolments in superior education courses upon submission of documentation issued by CONARE<sup>183</sup>. Accepted students receive scholarships, psychological assistance, and have access to housing and internship programs.

In March 2017, Universidade Estadual do Rio de Janeiro (UERJ) signed an agreement with the UN Agency for Refugees (UNCHR) and Instituto Sérgio Vieira de Mello<sup>184</sup>, pledging to include

---

<sup>180</sup> MELO, Débora. Bolsa Família: 42 mil imigrantes já recebem o benefício, *TERRA*, 2014. Available at: <https://www.terra.com.br/noticias/brasil/bolsa-familia-42-mil-imigrantes-ja-recebem-o-beneficio.f13ffa34e563a410VgnVCM5000009ccceb0aRCRD.html>. Last access on: June 9, 2017.

<sup>181</sup> CALENDÁRIO BOLSA FAMÍLIA 2017. Cadastro Bolsa Família 2017. Available at: <http://calendariobolsafamilia2017.com.br/cadastro-bolsa-familia-2017/>. Last access on: June 9, 2017.

<sup>182</sup> The Universidade Federal do Sul da Fronteira de Santa Catarina has a special selection process for the entry of individuals seeking refuge/refugees. The requirements include the registration of the refugee proceeding with the federal police and the confirmation of the refugee status by the National Committee for Refugees (CONARE), and the registration in the Program "Portuguese for Foreigners". Universidade Federal de Santa Maria has issued a declaration for the entry of refugees and migrants in vulnerable situations in the Technical, Technological and Undergraduate Courses. For each course, 5% of the number of vacancies will be reserved for refugees. The requirements for enrollment are: the evidence of conclusion of high school or equivalent in the country of origin; and proof of their migrant status as certified by the National Immigration Council (CNIq).

<sup>183</sup> MILES, Ir. Rosita; CARLET, Flavia. *Refugiados e políticas públicas: pela solidariedade, contra a exploração*, IMDH. Available at: <http://www.migrante.org.br/migrante/index.php/refugiados-as2/154-refugiados-e-politicas-publicas-pela-solidariedade-contra-a-exploracao>. Last access on: July 21, 2017.

<sup>184</sup> Sergio Vieira de Mello Institute has a Center for Studies in Immigration and Refugee Law and Policy, created in 2013 to promote the development of research in the area of international law and migration policy. With this agreement between UERJ and ACNUR, the Center will seek to promote deeper institutional relations with entities involved in issues related to refuge; create a legal aid clinic for refugees; encourage multidisciplinary research on refugees and human rights in various undergraduate and postgraduate courses and promote the international refugee law through curricular and extracurricular activities, among other methods.

migrants as an additional group in affirmative policies, which already exist to benefit minorities such as black and indigenous students, as well as students with low family income<sup>185</sup>.

### 6.1.5. Access to measures adapted to children with special needs

Brazilian legislation guarantees special conditions to children with special needs, ensuring specific services and reasonable accommodation in public schools. For this purpose, the law stipulates that special education is a school model offered in the public education system for students with “disabilities, global development disorders and high skills or giftedness”<sup>186</sup>.

The Brazilian legal framework stipulates measures to ensure special treatment for children with special needs, up to 6 years of age. They include: (i) specialized support services, (ii) methods, techniques, educational resources and structure to meet their needs, (iii) equal access to the benefits of social programs, (iv) special education to prepare them for their professional life, and (v) involvement of professionals with specialized training<sup>187</sup>.

As an example, the Association of Parents and Friends of the Exceptional Children (“Associação de Pais e Amigos do Excepcional – APAE”) – an organization engaged in defending the rights of the disabled and representing them before national and international bodies – created the “Specialized Vocational Program”, aimed at training professionals from all Brazilian states to deal with the new paradigms of special education for the disabled, including local and migrant children.<sup>188</sup>

In 1999, the National Service of Industrial Learning (“Serviço Nacional de Aprendizagem Industrial” - SENAI), in association with the Ministry of Education, developed a project called “Inclusion of People with Special Needs in Vocational Training Programs” to promote access and inclusion of people with disabilities in vocational courses, qualifying them for the demands of the labor market. The project has become part of the SENAI official program and now includes children of different races and ethnical origin.<sup>189</sup>

Nevertheless, it is essential that public policies related to special education for the disabled receive the necessary funds for its full development and coverage. If the State does not provide the instruments to care for children with special needs, the law granting them special benefits will become ineffective.

### 6.1.6. Access to education first reception centers or in detention/retention centers

The National Committee for Refugees – CONARE enacted Normative Resolution No. 14/2011 stipulating that refugees must have access to a public education system, similar to what is granted to Brazilian citizens (article 21). In addition, the Brazilian Refugee Law requires Brazilian authorities to consider the exceptional situation that refugees find themselves in and facilitate the enrollment of those who do not have school certificates or diplomas in education institutions.<sup>190</sup>

---

<sup>185</sup> ONU. UERJ and Fundação Casa Rui Barbosa are the new members of the Cátedra Sérgio Vieira de Mello, 2017. Available at: <https://nacoesunidas.org/uerj-e-fundacao-casa-rui-barbosa-sao-novas-integrantes-da-catedra-sergio-vieira-de-mello/>. Last access on: July 9, 2017.

<sup>186</sup> Law No. 9,394/1996, article 4, section III.

<sup>187</sup> Law No. 9,394/1996, article 4.

<sup>188</sup> MARKETING BEST. Defendendo direitos e enfrentando a violência – Campanha contra os maus-tratos, 2016. Available at: <http://www.marketingbest.com.br/sustentabilidade/apae-de-sao-paulo-defendendo-direitos-e-enfrentando-a-violencia-campanha-contra-os-maus-tratos/>. Last access on: July 20, 2017.

<sup>189</sup> SENAI. Programa SENAI de ações inclusivas – vertente pessoas com deficiência (PSAI). Available at: <http://www.senairs.org.br/pt-br/programas/programa-senai-de-a%C3%A7%C3%B5es-inclusivas-%E2%80%93-vertente-pessoas-com-defici%C3%Aancia>. Last access on: July 20, 2017.

<sup>190</sup> BRAZILIAN CARITAS (CÁRITAS BRASILEIRA). Booklet for refugees in Brazil, 2014. Available at: [http://caritas.org.br/wp-content/uploads/2013/09/CARTILHA\\_PARA\\_REFUGIADOS\\_NO\\_BRASIL\\_FINAL.pdf](http://caritas.org.br/wp-content/uploads/2013/09/CARTILHA_PARA_REFUGIADOS_NO_BRASIL_FINAL.pdf). Last access on: September 14, 2017.



According to the ECA<sup>191</sup> the first reception center must develop educational activities and adopt procedures to facilitate the child's participation in the local community life<sup>192</sup>. Additionally, a child in detention/retention center has the right to engage in cultural, sports and leisure activities.

Therefore, Brazilian law states that first reception centers in Brazil must offer education, within the premises of the center, and take measures to enroll the child in the public school. It is important to note that first reception center's education program differs from public school curricular activities. The first reception center only provides initial assistance, such as introducing the child in the local community and facilitating enrollment procedure in public school.

In order to effectively enroll in school, children and adolescents generally need to present their Individual Taxpayer's Registry I.D. and provisional protocol of refugee status, or National Register of Foreigners<sup>193</sup> ("Registro Nacional de Estrangeiros" -RNE).<sup>194</sup>

The vast majority of Brazilian municipalities do not have a first reception center and researcher Graziela Rocha indicates that for that reason civil society organizations have a fundamental role in supporting the State in providing reception to children and adolescents from other countries.

"Missão Paz" is one example of a civil society which provides shelter for migrants, immigrants and refugees. Their programs include Portuguese classes, as well as cultural activities, such as movies, cartoons and workshops for children and adolescents, within the premises of the center, as extracurricular activities.<sup>195</sup>

"Casa de Passagem Ana Vasconcelos" is another civil society which provides shelter for migrants, immigrants and refugees, which offers social education activities, conducts educational and dance workshops, painting and basic computer classes, within the premises of the center.<sup>196</sup>

The Municipality of São Paulo created "Terra Nova", a house to receive migrant people. It offers cultural activities, professional orientation and Portuguese classes.<sup>197</sup>

In public schools, migrant students have the same curricular activities than Brazilian pupils. In São Paulo, there are extracurricular activities for migrants in order to address with language and cultural inclusion problems.<sup>198</sup>

## 6.2. Health care

### 6.2.1. Migrant children's access to health care

According to the Federal Constitution, the right to health is guaranteed to all individuals without discrimination. The State must guarantee this right to every Brazilian citizen through social and economic policies aimed at reducing the risk of illness and other hazards, and providing universal

---

<sup>191</sup> Law No. 8,069/1990, article 92, section II.

<sup>192</sup> Law No. 8,069/1990, article 92, section VII.

<sup>193</sup> The National Registry of Foreigners (*Registro Nacional de Estrangeiros* –RNE) is granted to foreigners admitted as temporary, permanent, asylum seeker or refugee, who are required to register and identify themselves with the Ministry of Justice and with the Federal Police. It is valid for an undetermined period of time.

<sup>194</sup> ACNUR. *Cartilha para solicitantes de refúgio no Brasil*, 2014. Available at:

[http://www.acnur.org/fileadmin/scripts/doc.php?file=fileadmin/Documentos/portugues/Publicacoes/2014/Cartilha\\_para\\_solicitantes\\_de\\_refugio\\_no\\_Brasil](http://www.acnur.org/fileadmin/scripts/doc.php?file=fileadmin/Documentos/portugues/Publicacoes/2014/Cartilha_para_solicitantes_de_refugio_no_Brasil). Last access on: June 20, 2017.

<sup>195</sup> PEACE MISSION (MISSÃO DE PAZ). <http://www.missaospaz.org/>. Last access on: May 17, 2017.

<sup>196</sup> ANA VASCONCELOS HALFWAY HOUSE (CASA DE PASSAGEM ANA VASCONCELOS).

<http://www.casadepassagem.org.br/index.php>. Last access on May 17, 2017.

<sup>197</sup> SÃO PAULO STATE GOVERNMENT PORTAL (PORTAL DO GOVERNO DO ESTADO DE SÃO PAULO). *São Paulo State Government accommodates refugees*. <http://www.saopaulo.sp.gov.br/spnoticias/ultimas-noticias/governo-de-sao-paulo-acolhe-refugiados-em-casa-de-passagem-1/>. Last access on: May 17, 2017.

<sup>198</sup> SÃO PAULO STATE GOVERNMENT PORTAL. *More than 10 thousand migrants were enrolled in public schools in 2017*. Last access on: March 08, 2018.



and equal access to healthcare services and assistance. The Brazilian Public Health System<sup>199</sup> is universal, free of charge, and can be accessed equally by every person in the Brazilian territory.<sup>200</sup>

In addition, the Federal Constitution stipulates that is the duty of the family and the society to ensure that children have a priority right to health, and to protect them from all forms of negligence, discrimination, violence, cruelty and abuse.<sup>201</sup> Intervention by non-governmental entities is permitted by means of specific policies.<sup>202</sup>

It is the duty of the State to freely guarantee, medications, prosthesis, orthosis, assistive technologies related to treatment, habilitation or rehabilitation for children and adolescents, according to their special needs.

In line with the rationale of equal treatment between national and migrant children, CONARE, the National Committee for Refugee, issued Normative Resolution No. 14/2011, which establishes that refugees must have access to the public health system on equal footing with Brazilian citizens (article 22).

Therefore, Brazilian legislation guarantees that the right to medical assistance is applicable to migrant children and adolescents regardless of their status.

### 6.2.2. Access of migrant children with special needs to specialized medical assistance

The answer to the present question follows the same rationale of the answer to question 6.2.1: Brazilian legislation guarantees that all children and adolescents must be treated equally regardless of their status.

Brazil has a National Policy on the Health of Persons with Disabilities. This policy has three main goals: (i) protect the health of the person with special needs; (ii) rehabilitate their functional capacity and performance, contributing to their social inclusion; and (iii) prevent situations that may lead to the occurrence of disabilities, such as, domestic, occupational or traffic accidents.<sup>203</sup>

One important program arising from the National policy above, is the SUS Health Care Network of the Person with Disabilities.<sup>204</sup> According to Ordinance No. 793/2012 of the Brazilian Health Ministry, the network seeks to: (i) extend access and qualify people with disabilities for the SUS, focusing on network organizations, comprehensive health care and covering hearing, physical, visual, intellectual and ostomy deficiencies; (ii) extend the integration of rehabilitation services with the primary care network and other specialized care points; and (iii) develop actions to prevent disabilities in childhood and adult life (article 3, sections I, II and III).<sup>205</sup>

---

<sup>199</sup> Law No. 8,080/1990, Brazilian Public Health System – SUS.

<sup>200</sup> Law No. 8,080/1990, article 2. CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL 1988 (CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL), article 198.

<sup>201</sup> CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL 1988 (CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL), article 227. “It is the duty of the family, society, and the State to ensure children, adolescents, and young people, with absolute priority, the right to life, health, food, education, leisure, professional training, culture, dignity, respect, freedom, and family and community life, as well as to protect them from all forms of negligence, discrimination, exploitation, violence, cruelty, and oppression”.

<sup>202</sup> CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL 1988 (CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL 1988), paragraph 1. “The State shall promote full health assistance programs for children, adolescents, and young people, the participation of non-governmental entities being allowed, by means of specific policies and with due regard to the following conditions”.

<sup>203</sup> BRAZILIAN HEALTH MINISTRY (MINISTÉRIO DA SAÚDE). Health portal. General Coordination Office of people with disabilities health. <http://portalsaude.saude.gov.br/index.php/o-ministerio/principal/secretarias/508-sas-raiz/dapes/saude-da-pessoa-com-deficiencia/11-saude-da-pessoa-com-deficiencia/13376-apresentacao>. Last access on: June 12, 2017.

<sup>204</sup> Ordinance No. 793 created SUS Health Care Network for Persons with Disabilities, in April 24, 2012.

<sup>205</sup> MUNICIPAL HEALTH OFFICE (SECRETARIA MUNICIPAL DA SAÚDE). Health portal. Ordinance No. 793/2012 of the Brazilian Health Ministry. [http://bvsmms.saude.gov.br/bvs/saudelegis/gm/2012/prt0793\\_24\\_04\\_2012.html](http://bvsmms.saude.gov.br/bvs/saudelegis/gm/2012/prt0793_24_04_2012.html). Last access on: September 16, 2017.

Within that network are the Specialized Rehabilitation Centers - CER, that provide services with technology to match different types of specific care to different types of disabilities. Given this network is part of the SUS, it must be available to all people, including migrants, refugees and asylum seekers.

Therefore, migrant children and adolescents with special needs have the right to benefit from specialized medical assistance regardless of their status (i.e., refugee, migrant, asylum seeker, children in illegal situation).

Brazilian legislation guarantees health rights to migrant children and adolescents without any kind of discrimination or segregation in order to provide services and public policies efficiently throughout different regions of the country.

Different economic indicators are the main factors responsible for regional discrepancies in Brazil. The southeast is the most economically developed region; consequently, the region provides more efficient public policies and better quality in public services. Please note that the State of São Paulo has a 91,7% index of immigrants with access to public health services. Contrarily, the State of Roraima only has a 69,5% index; this is a result of lack of revenue and budget restrictions on public programs aimed at providing assistance to immigrants.<sup>206</sup>

One of the serious problems linked to this is the difficulty in legalizing the migrants situation, as well as navigating the red tape required to obtain the necessary documents to access public services. As an example, to access a public health facility, the migrant should present the Individual Taxpayer's Registry I.D.<sup>207</sup> and the provisional protocol or RNE<sup>208</sup> at any hospital, clinic or facility in order to request a SUS Card (the card to access the Brazilian Health system network). This card is free of charge and can be used in any public health unity in the national territory. If the migrant child or adolescent does not have these documents, it may be difficult for them to access public health services.

However in 2016 São Paulo developed certain public policies for the reception of refugees. The program trained public health workers to combat prejudice and discrimination, and prepared informational materials in 4 languages – English, Spanish, French and Creole – to explain how to access the public health system in the municipality.<sup>209</sup>

Another controversial point is vaccination. Brazil receives migrants whom have not been vaccinated against certain diseases that are common on the Brazilian territory. In Brazil, parents have the obligation to vaccinate their children. Children from refugees and asylum seekers' can freely obtain vaccines in public health units.<sup>210</sup>

According to the Brazilian Federal Constitution, although SUS is universal and granted to every Brazilian citizen, it is not always efficient and the provision of public health services lacks quality. Patients face difficulties in obtaining treatment, especially in hospitals and for complex

---

<sup>206</sup> Data obtained in the JUBILUT, Liliana Lyra (Coord.). *Migrantes, apátridas e refugiados: subsídios para o aperfeiçoamento de acesso a serviços, direitos e políticas públicas no Brasil*. Brasília: Ministério da Justiça, Secretaria de Assuntos Legislativos (SAL): IPEA, 2015, p. 69 and 126.

<sup>207</sup> The CPF is an individual tax identification number. It is one of the main documents for citizens residing in Brazil as it allows access to a series of facilities, such as the SUS, registration in public education institutions, opening a bank account and other financial transactions. Any individual, national or foreigner, can request the registration in the CPF.

<sup>208</sup> Refugees recognized in Brazil have the right to obtain the National Registration of Foreigners (RNE), the identification document for foreigners in Brazil; a definitive work permit (CTPS); a Brazilian Tax Number (CPF) and a travel document. Further information on how to apply for those documents can be found in the "Documentation" section of the booklet.

<sup>209</sup> MUNICIPAL HEALTH OFFICE (SECRETARIA MUNICIPAL DA SAÚDE). *São Paulo Municipal Government begins reception of immigrants' campaign*. Available at:

<http://www.prefeitura.sp.gov.br/cidade/secretarias/saude/noticias/?p=217244>. Last access on: May, 17, 2017.

<sup>210</sup> BRAZILIAN CARITAS (CÁRITAS BRASILEIRA). *Booklet for refugees in Brazil*, 2014. Available at: [http://caritas.org.br/wp-content/uploads/2013/09/CARTILHA\\_PARA\\_REFUGIADOS\\_NO\\_BRASIL\\_FINAL.pdf](http://caritas.org.br/wp-content/uploads/2013/09/CARTILHA_PARA_REFUGIADOS_NO_BRASIL_FINAL.pdf). Last access on: May, 17, 2017.

procedures. This is due, in part, to the high demand and insufficient structure of SUS, occasioning long queues to receive medical attention and/or necessary medical procedures.

## **7. Expulsion**

### **7.1. Exclusion clauses**

Brazilian Refugees Law<sup>211</sup> excludes certain individuals from being granted refugee status, as follows:

- an individual who enjoys international protection from UN agencies, other than UNHCR;
- an individual who lives in Brazil and has rights and obligations due to his/her Brazilian status;
- an individual who has committed crimes against peace and war, crimes against humanity, heinous crimes, drug trafficking, or has participated in terrorist acts;
- an individual who is found guilty of acts, which are not in compliance with the purpose and principles of the UN.

Besides the definition of ‘exclusion clauses’, children receive legal protection from provisions in the ECA. According to the Brazilian Constitution, “minors under 18 years of age may not be held criminally liable and shall be subject to the rules of special legislation” (Section 228). The ‘special legislation’, Law No. 8,069/1990, provides that children may not be held criminally liable (i.e. cannot be charged with criminal penalties pursuant to Section 104) and may only face protection and correctional measures.

Furthermore, CONANDA, CONARE, CNIg and DPU have issued a normative resolution, which establishes procedures for the preliminary identification, attention and protection of unaccompanied or separated children, or adolescents. The procedure seeks to protect the child's mental state. According to the resolution throughout the process, children or adolescents should participate, be consulted and kept informed about procedures and decisions taken in relation to them and about their rights, in a manner that is appropriate to their stage of development. Additionally, unaccompanied or separated children or adolescents who are duly represented should have access to asylum, refuge and immigration procedures, regardless of their status as a minority.

As children are not criminally liable under Brazilian legislation, there is no precedent of a migrant child being excluded in this manner<sup>212</sup>. ‘Exclusion clauses’ are only applicable to individuals (not children), who have committed crimes against peace or war, crimes against humanity, heinous crimes, have participated in terrorist acts, or drug trafficking; or to individuals who are found guilty of acts contrary to the purpose and principles of the UN.

As mentioned above, the ‘exclusion clauses’ are applicable to individuals (not children) who have committed crimes against peace or war, crimes against humanity, heinous crimes, have participated in terrorist acts or drug trafficking, or to individuals who are found guilty of acts that are not in compliance with the purposes and principles of the UN. Children are not strictly criminally liable under Brazilian legislation.

---

<sup>211</sup> Law No. 9,474/1997, section 3.

<sup>212</sup> Law No. 8,069/1990, articles 103, 104 and 105.

## **7.2. Internal relocation/expulsion to country of origin**

### **7.2.1. Decision regarding internal relocation of a child back to his country of origin**

Repatriation of a child to his or her country of origin should be voluntary<sup>213</sup> and he/she must be accompanied by his/her family, or guardian, except if the repatriation guarantees the child's rights of reintegration with the family of origin. Repatriation consists of an administrative procedure to return someone to his/her country of origin.

However, repatriation is distinguished from deportation and expulsion. Deportation consists of an administrative proceeding to remove an unlawful immigrant compulsorily from Brazil to his/her country of origin. Expulsion, in turn, consists of an administrative proceeding to remove a migrant or visitor compulsorily from Brazil to his/her country of origin with a prohibition on re-entering Brazil for a fixed term.

### **7.2.2. Monitoring of a child returned to his/her country of origin**

Brazilian legislation does not allow for repatriation measures to be applied to an unaccompanied child, except if the child's rights, or reintegration with his/her family of origin, are guaranteed. However, this research did not identify any examples of repatriation procedures carried out in these situations.

### **7.2.3. Availability of country of origin information reports to decision makers**

In Brazil, CONARE is the governmental body in charge of reviewing and deciding all asylum claims. The authorities at CONARE gain information from research of public databases, such as information available in the website [refworld.org](http://refworld.org) (which organizes reports from UN agencies), international organizations (for example, Human Rights Watch), the Ministry of Foreign Affairs (MRE), UNHCR and other refugee authorities around the world, as well as from local news. Civil society organizations such as Caritas Arquidiocesana do Rio de Janeiro (CARJ) and Caritas Arquidiocesana de São Paulo (CASP), work to promote the protection, assistance and local integration of asylum seekers and refugees in Brazil. These organizations assist CONARE with country specific reports (for example, information about the Democratic Republic of Congo). Finally, the federal police (the governmental body in charge of registering asylum claims) provide documents for asylum seekers and refugees, informing asylum seekers on the outcome of their claims, receive appeals against CONARE's decisions, and catalogue information regarding different countries. The latter also being used by decision makers.

## **7.3. Resettlement to a third country**

### **7.3.1. Decision to resettle a child to a third country**

According to the current Brazilian Migration Law, resettlement to a third country should be determined with reference to the refugee's wishes. In this regard, the Law does not make any distinction between adults and children:

Section 45. Resettlement of refugees in other countries should be, whenever possible, voluntary.<sup>214</sup>

The new Migration Law stipulates that Brazilian migration policy should be guided by the children's full protection, and the best interest's principle<sup>215</sup>.

---

<sup>213</sup> Law No. 3,445/2017.

<sup>214</sup> Law No. 9,474/1997.

<sup>215</sup> Law No. 13,445/2017, article 3, section XVII.

Article 3. The Brazilian migratory policy is guided by the following principles and guidelines:

XVII - integral protection and attention to the superior interest of the migrant child and adolescent.<sup>216</sup>

As mentioned in response to question 7.1., public authorities in charge of proceedings involving refugee children published a joint resolution establishing that every action or proceeding involving refugee children must be in accordance with the principles of full protection, absolute priority and the children's best interest:

Section 3. This resolution and all actions arising from it are guided by the principles of full protection, absolute priority and attention to the best interest of the child and the adolescent.<sup>217</sup>

Therefore, resettlement to a third country as a response to a child's asylum claim is guided by the principle of the child's best interest and other child protection principles.

### 7.3.2. Resettlement schemes to Brazil

Brazilian resettlement program is stipulated in articles 45 and 46 of the Law No. 9,474/97, which emphasizes the voluntary nature of resettlement and the need for planning, coordination and determination of responsibilities of all parties involved in the process:

Section 46. The resettlement of refugees in Brazil will be carried out in a planned manner and with the coordinated participation of state agencies and, when possible, nongovernmental organizations, identifying areas for cooperation and determination of responsibilities.<sup>218</sup>

In 2004, some Latin American countries (i.e. Brazil, Chile, Colombia, Costa Rica, Ecuador, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, Uruguay, Dominican Republic and Trinidad and Tobago) adopted the "Mexico Plan of Action"<sup>219</sup>, which called for the creation of a Solidarity Resettlement Program ("SRP") for refugees seeking asylum in Ecuador and Costa Rica. As a result, and in the framework of international solidarity and responsibility sharing Brazil drafted a Resettlement Program in 2011 - CONARE Resolution No. 14.

CONARE Resolution No. 14 establishes that refugees are eligible for the Brazilian Resettlement Program if they fit into at least one of the submission categories established by the UNHCR in its Resettlement Handbook<sup>220</sup>. Cases where the applicants present with special needs will be analyzed according to the availability of adequate services in Brazil.

UNHCR submits cases to CONARE and attaches a complete resettlement request form signed by the applicant (UNHCR Resettlement Registration Form) along with any other relevant documentation. The selection process for Brazilian resettlement candidates includes a personal interview with a Brazilian delegation composed of representatives of CONARE, UNHCR and,

---

<sup>216</sup> Law No. 13,445/2017.

<sup>217</sup> Joint Resolution between CONANDA, CONARE, CNIg and DPU. Available at: <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=1&pagina=37&data=18/08/2017>. Last access on: July 20, 2017.

<sup>218</sup> Law No. 9,474/1997.

<sup>219</sup> CEPAL. Países de la región aprueban plan de acción hasta 2014 para fortalecer derechos de acceso en temas ambientales, 2013. Available at: <http://www.cepal.org/es/comunicados/paises-de-la-region-aprueban-plan-de-accion-hasta-2014-para-fortalecer-derechos-de>. Last access on: July 20, 2017.

<sup>220</sup> NATIONAL REFUGEE COMMITTEE (COMITÊ NACIONAL PARA OS REFUGIADOS). Resolution No. 14/2011. Available at: <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=1&pagina=35&data=29/12/2011>. Last access on: September 20, 2017.

preferably, a member of the civil society implementing the Program in the country where the candidates are located. At the end of the interview, each candidate over the age of 18 is to individually sign a consent form agreeing to the terms of the project under the Brazilian Resettlement Program.

A report in 2015 by UNHCR called “Evaluation of Resettlement Programs in Argentina, Brazil, Chile, Paraguay, and Uruguay”<sup>221</sup>, asked refugees if they were satisfied with the level of support and assistance provided in these countries. The feedback on both the Brazilian program, and of Brazil as resettlement country, demonstrated that 73% of refugees (a total of 16) were satisfied with the program, while only 4 noted their dissatisfaction (2 stated that they were neither satisfied nor dissatisfied).

## 8. Data Collection

### 8.1. **Data regarding migrant children on the move collected by the public authorities:**

Brazilian authorities control information on refugees through collecting data from the bodies responsible for the refuge process, such as the DPU, the federal police, CONARE, the National Refugee Committee. These bodies make their best efforts to keep the documentation confidential.

During migration control, if the border authority notices a child who appears to be unaccompanied or separated from his/ her family, it must: (i) make a police report; (ii) collect information such as name, gender, date of birth, affiliation and nationality from any documents or declarations that the child may carry; and (iii) notify the relevant authorities responsible for child protection in Brazil.<sup>222</sup>

The DPU is responsible for requesting regularization, obtaining documents, conducting interviews and carrying out other acts seeking to protect the child. It will collect any data that can help determine the reasons that the child is seeking international protection, and carry out a vulnerability assessment, always guided by the best interests principle.<sup>223</sup>

### 8.2. **Data protection: Is confidentiality of data regarding children secured?**

According to article 23 of Law No. 9,474/1997, the “Refugees’ Law”, all data concerning a refugee is guided by the confidentiality principle:

Article 23. The competent authority shall take any measures required by CONARE and shall examine all facts known for a fair and rapid decision, always respecting the confidentiality principle.<sup>224</sup>

Accordingly, ensuring confidentiality of the information is a fundamental aspect of the refuge process; otherwise, there may be an undue exposure of the applicant to scrutiny by the community within Brazil, and in their country of origin. The need for ensuring confidentiality is greater in processes involving children; authorities must make positive steps to keep information

---

<sup>221</sup> RUIZ, Hiram. Evaluation of resettlement programs in Argentina, Brazil, Chile, Paraguay, and Uruguay. December 2015. p. 42.

<sup>222</sup> Joint Resolution between CONANDA, CONARE, CNIg and DPU. Available at: <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=1&pagina=37&data=18/08/2017>. Last access on: July 20, 2017.

<sup>223</sup> Joint Resolution between CONANDA, CONARE, CNIg and DPU. Available at: <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=1&pagina=37&data=18/08/2017>. Last access on: July 20, 2017.

<sup>224</sup> Law No. 9,474/1997.



related to children confidential during the entire process.

## 9. International relations

### 9.1. Foreign aid that addresses root causes of migration of minors (in particular of unaccompanied minors) in countries of origin and transit countries.

The Brazilian federal government and state authorities have developed human trafficking awareness programs. For instance, from 2012 to 2015, the National Council of Justice organized 5 international symposiums to discuss measures to prevent and fight human trafficking.

From 15 May to 12 June 2017, the Ministry of Justice and Public Security in association with the Drug and Crimes Office of the United Nations carried out a public consultation aimed at assessing the second National Plan to Fight Human Traffic, and developing the third version.

Local initiatives such as those developed by the Social Defense State Secretariat for Minas Gerais in association with *Instituto Elo*<sup>225</sup> and the Human Traffic Prevention Division of the Justice and Citizenship Defense Secretariat for the State of São Paulo, seek to foster cooperation between citizens and public authorities in reporting and fighting human trafficking, as well as in assisting district attorney offices of both states to convict parties responsible for such crimes.

The UNHCR has published a booklet providing information on refugees' rights within the Brazilian territory, such as the freedom to travel throughout the country, access to public healthcare, freedom of religion, the right to attend public schools, and the right to take part in public programs for professional and technical capacity building.

However, this research did not identify any cooperation programs that provide information for children and families on studying, training and working in their country of origin.

Brazil does not have specific program aid targeting birth registration of children in developing countries and has not entered into any bi-lateral agreements regarding family tracing, return or the reintegration of unaccompanied minors. Nevertheless, the Refugee Statute, which was incorporated into Brazilian legislation as Federal Law No. 9,474/1997, recognizes the special nature of the refugee condition and the necessary measures to provide material and legal assistance to people in such condition.

The UNHCR booklet also provides some information concerning the provision of assistance to refugees in voluntarily returning to their country of origin (article 42 of Law No. 9,474/1997).

On May 24, 2017, Law No. 13,445, the New Migration Law was enacted. Articles 3 and 4 of the New Migration Law outlines principles and guidelines, including a right of reunification for families, encompassing the right of the migrant to be reunited with his/her family, spouse or partner, children and dependents. Article 14 of the Migration Law establishes that Brazilian authorities may issue temporary visas to migrants coming to Brazil for the purpose of reuniting with family members.

Refugees cannot be returned or expelled to a country where their lives or physical integrity are at risk of being violated, and in no circumstances can they be returned to their country of origin, according to article 33 of Refugee Statute; This provision is applicable to unaccompanied minors. Article 49 (4) of the Migration Law establishes that the repatriation of refugee minors, although prohibited as a rule, shall be authorized if it is for the purpose of reunification with family.

---

<sup>225</sup> *Instituto Elo* is a non-governmental organization certified by the Government of Minas Gerais, which aims at developing and managing social initiatives, fostering the inclusion of people and communities subject to social exclusion and diverse risks.

On October 6, 2016, the Brazilian Government enacted Federal Law No. 13,344, which provides measures to combat and prevent internal and international human trafficking, and to ensure the provision of assistance to victims of such crimes.

Pursuant to article 6, ‘protection and assistance to direct or indirect victims of human trafficking’ includes: legal, social, labor and health assistance; sheltering; assistance related to gender, sexual orientation, ethnic and social origin, nationality, language, social affairs, family and other matters; preservation of intimacy and identity; prevention of recurrence of such crimes during the assistance and investigatory proceedings; humanized assistance; and the provision of necessary information regarding administrative and judicial proceedings.

Moreover, as mentioned previously, after holding discussions with entities involved with the protection of migrant’s rights, Brazilian Government has enacted on May 24, 2017, the so-called New Migration Law, i.e. Federal Law No. 13,445 which sets out on its article 30:

- (i) Protection of stateless persons, and measures to reduce and prevent statelessness;
- (ii) Approval of visa or resident authorization that unites families;
- (iii) Residence authorization for victims of human trafficking, slave labor, and/or a violation of rights due to their migratory condition.

The DPU has played an important role in the discussions involving the Migration Law. Through the work of the Federal Public Defender Daniel Chiraretti, president of the Migration and Refugees Working Group of the entity, the DPU provided a number of submissions on the law<sup>226</sup>. The United Nations Refugee Agency was crucial in the development of this law, issuing technical opinions during discussions, and providing information and data.

## 9.2. Cooperation with civil society

Brazil does not have a specific cooperation policy with organizations specialized in child migration. However, the Brazilian Council of Immigration, the government entity responsible for the Brazilian immigration policy, relies on input from representatives of labor unions, companies in the private sector and the scientific community. The Brazilian government also conducts a refugee resettlement program with UNHCR.

Brazil has recently established Centers for Reference and Acceptance of Immigrants and Refugees – CRAIs, which offer: reception and specialized assistance to immigrants and refugees; legal, psychological and social support; and professional qualification workshops. The project seeks to promote access to rights, the social, cultural and economic inclusion of immigrants through specialized care, access to reception services, and participation in courses and workshops.<sup>227</sup> The Centers are located in São Paulo (State of São Paulo) and Florianópolis, (state of Santa Catarina).

In Brazil, UNHCR has headquarters in Brasília and a newly inaugurated unit in São Paulo. The agency works with CONARE, which is under the jurisdiction of the Ministry of Justice. To ensure the provision of humanitarian assistance and the integration of refugees, UNHCR works in partnership with various non-governmental organizations throughout the country, such as Caritas Archdiocesan of Rio de Janeiro - CARJ, Archdiocesan Caritas of São Paulo - CASP, and the Migration and Human Rights Institute - IMDH<sup>228</sup>.

<sup>226</sup> ANADEF. *Federal Public Defenders’ Office and the new Immigration Law*, 2015. Available at: <http://www.anadef.org.br/ultimas-noticias/53-destaques/3988-defensoria-publica-e-a-nova-lei-de-migracao>. Last access on: July 20, 2017.

<sup>227</sup> MINISTRY OF JUSTICE BRAZIL (MINISTÉRIO DA JUSTIÇA BRASIL). *Santa Catarina terá centro de referência e acolhida para imigrantes e refugiados*, 2016. Available at: <http://www.justica.gov.br/noticias/santa-catarina-tera-centro-de-referencia-e-acolhida-para-imigrantes-e-refugiados>. Last access on June: 12, 2017.

<sup>228</sup> ACNUR. *O ACNUR no Brasil*. Available at: <http://www.acnur.org/portugues/informacao-geral/o-acnur-no-brasil/>. Last access on June: 12, 2017.

Today, the so called “Protection Network” is made up of more than 30 organizations, present in virtually all Brazilian states. Individuals may also join the “Protection Network”. In addition, UNHCR has partnerships with the Special Secretariat for Policies for the Promotion of Racial Equality - SEPPIR, the Special Secretariat for Women's Policies, and the Ministries of Health, Education, Labor and Social Development.

Caritas International is a global organization dedicated to assisting families in risky situations and affected by social and environmental disasters. Caritas also offers assistance to refugees and immigrants and has a specific program for children. In Brazil, Caritas is active through *Cáritas Brasil*, an entity created by the National Conference of Brazilian Bishops in 1956<sup>229</sup>.

Another important institution with activities in Brazil is the Migration and Human Rights Institute - IMDH. The Institute provides legal and humanitarian assistance to immigrants, and has created a social network that provides assistance to migrants, made up of more than 50 organizations. The Institute works with the Brazilian Refugee Committee in formulating the Brazilian immigration policy.

The “I Know My Rights”<sup>230</sup> movement is exclusively dedicated to refugee children in Brazil, and assists children up to 12 years of age.

### 9.3. Visa policies

The humanitarian visa system became effective in Brazil in November 2017, when the new Migration Law came into effect. The humanitarian visa is characterized as a temporary visa to be granted to any stateless person, or nationals of any country facing the following difficulties: serious or imminent institutional instability; armed conflict; major calamity; environmental disaster; serious violation of human rights or international humanitarian law; or other situations that may be included in future regulations.

This new Migration Law stipulates documents, timeframe and other requirements for the granting of a humanitarian visa.

Until this measure came into force a temporary measure has been applied to visas granted to Haitians - due to the worsening of living conditions in that country as result of the 2010 earthquake - and to Syrians due to the worsening of living conditions in Syria as result of armed conflict.

In particular with regards to Haitians, in April 2018 a Joint Ministerial Ordinance<sup>231</sup> guaranteed the temporary visa for humanitarian purposes for a period of two years. This temporary visa can be converted into a permanent residency if the Haitian:

- I - has not been absent from Brazil for a period exceeding ninety days in each migratory year;
- II - has entered and left the national territory exclusively through Brazilian migratory control;
- III - does not present criminal records in Brazil; and
- IV – proves his/her own means of subsistence.

Brazil also grants temporary residency to foreign citizens from countries, which have not signed the Mercosul agreement and the Associated Countries Residency Agreement<sup>232</sup> (Venezuela,

---

<sup>229</sup> CÁRITAS BRASILEIRA. *Quem somos e histórico*. Available at: <http://caritas.org.br/quem-somos-e-historico>. Last access on: July 21, 2017.

<sup>230</sup> <http://www.ikmr.org.br/amor-sem-fronteiras>, access on June 2017.

<sup>231</sup> According to the Joint Ministerial Ordinance nº 10, issued in April 6, 2018.

<sup>232</sup> BRAZILIAN IMMIGRATION COUNCIL (CONSELHO NACIONAL DE IMIGRAÇÃO). Resolution No. 126/2017. Available at: <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=1&pagina=88&data=03/03/2017>. Last access

Guiana, Suriname and French Guiana), who enter Brazil by land and do not receive refugee protection. This temporary residency has been applied to citizens of Venezuela due to the economic crisis the country is going through. It is valid for a period of 2 years only and cannot be renewed.

