

# **The impacts of the Refugee Statute on the reception of people in situations of forced displacement in Brazil: a brief introduction**

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## **Introduction**

In this century, Brazil has had a significant increase in asylum requests. The reasons for this increase in requests from people in situations of forced displacement are due to the country's greater protagonism on the international scene and the application of new migration legislation, which sought to bring the country closer to the issues of today's society.

The first mention of migratory issues recorded in Brazil dates to 1824, when the Brazilian Constitution of the time presented two articles that prevented the participation of foreigners in the Imperial government (CLARO, 2015, p. 125). Since then, other laws were created during the Empire and later during the Republic. One of the laws that was valid for the longest time was Law No. 6,815/80, popularly known as the Foreigner Statute, from 1981 to 2017, covering part of the Brazilian Military Dictatorship (1964-1985), the period of redemocratization and the promulgation of the Federal Constitution of 1988.

This law was problematic in several aspects because it treated all migrants as potential “threats to national sovereignty” and did not provide for differentiation between different types of migrants (FREITAS, 2024, p. 87). In practice, refugees, stateless people and migrants working in the country were treated the same

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way. With the implementation of the 1988 Constitution, several articles of its order were declared unconstitutional and in 2017 a new law to replace it was created, Law No. 13,445/17, popularly known as the Migration Law.

During the validity of the Foreigner Statute, there was an advance in migration legislation in Brazil through Law No. 9,474/97, in 1997, which became popularly known as the Refugee Statute. This new law promoted advances in the issue of refugee recognition in Brazil, making the process less bureaucratic, more humanitarian and more comprehensive. Through its ratification, the National Committee for Refugees (Conare) also emerged, which became the responsible for analyzing asylum requests in Brazil.

This brief article will present details about this legislation, the impacts it had on the reception of people in situations of forced displacement and a general overview of the current refugee numbers in Brazil using as methodology a literature review of research on migration and legislation.

### **The Refugee Statute (Law nº 9,474/97)**

As mentioned in the introduction, the main Brazilian legislation regarding migration was the obsolete Foreigner Statute. With the end of the Military Dictatorship in 1985 and the promulgation of the new Federal Constitution in 1988, Brazil decided to review its migration laws. On July 22, 1997, under the presidency of Fernando Henrique Cardoso, Law No. 9,474/97 was sanctioned, which became popularly known as the Refugee Statute. The first article of the law said:

Art. 1º Every individual will be recognized as a refugee who: I- due to well-founded fear of persecution for reasons of race, religion, nationality, social group or political opinion, is outside his/her country of nationality and is unable or unwilling to be admitted to protection of such country; II - having no nationality and being

outside the country where he previously had his habitual residence, he is unable or unwilling to return there, due to the circumstances described in the previous item; III - due to serious and widespread violation of human rights, he is obliged to leave his country of nationality to seek refuge in another country. (Brasil 1997).<sup>12</sup>

One of the great advances of this legislation in relation to the Foreigner Statute, which was still valid in 1997, was the objective definition of what the Brazilian government identified as a person in a refugee situation. If before there was not the slightest distinction between migratory categories, the Refugee Statute made this very clear in its lines, in addition to following the guidelines defined by the 1951 Refugee Statute and the 1967 Protocol on the Status of Refugees, documents issued by the United Nations in 1951 and 1967 respectively (FREITAS, 2024, p. 89).

The law was considered by experts and researchers on the issue of refuge as one of the most comprehensive and modern of the period. However, it also faced criticism for simultaneously being bureaucratic and having a slow procedure for recognizing refugee status in Brazil. For Jubilut (2007), the Refugee Statute “is extremely well structured from a formal point of view and because it adopts in several passages the same criteria as the 1951 Refugee Statute”. The researcher also points out that Brazilian legislation is very complete on humanitarian issues:

[...] the Brazilian legal system, as mentioned, goes further and adopts an expanded definition, to understand the serious and generalized violation of human rights as a factor of recognition of refugee status. This fact constitutes the greatest merit of the

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12 Original version in Portuguese: Art. 1º Será reconhecido como refugiado todo indivíduo que: I- devido a fundados temores de perseguição por motivos de raça, religião, nacionalidade, grupo social ou opiniões políticas encontre-se fora de seu país de nacionalidade e não possa ou não queira acolher-se à proteção de tal país; II - não tendo nacionalidade e estando fora do país onde antes teve sua residência habitual, não possa ou não queira regressar a ele, em função das circunstâncias descritas no inciso anterior; III - devido a grave e generalizada violação de direitos humanos, é obrigado a deixar seu país de nacionalidade para buscar refúgio em outro país. (Brasil, 1997).

national law on refugees since, through it, the political will to protect people who are victims of disrespect for their most fundamental rights can be seen in order to denote solidarity with other human beings and an awareness of Brazil international responsibility. (JUBILUT, 2007, p. 191).<sup>13</sup>

The law also recognized spouses, ascendants, descendants and other members of the family group as refugees if they were in national territory. The Refugee Statute also created Conare, a specific federal body to take care of the refugee population and the asylum requests that the country received. Established as the body responsible for the issue of refuge in the country, Conare holds periodic meetings and evaluates requests for refuge that were prepared by employees of the body's General Coordination and interviews collected with individuals requesting refuge in Brazil. To reach this definition, however, it is necessary to go through a long and often bureaucratic process (FREITAS, 2024, p. 90).

As soon as they disembark in Brazil, these individuals seeking refuge in the country must present themselves to the Federal Police, who will forward the request to Conare. The asylum seeker then fills out a form and goes through an interview. Conare will then assess the situation to see whether it can issue a declaration of authorization, which will issue a provisional asylum request protocol, or whether it will refuse. If accepted, the applicant will be able to have permanent documentation of identity and if denied, they will be able to file an appeal. If this appeal is refused,

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13 Original version in Portuguese: [...] o ordenamento jurídico brasileiro, como citado, vai além e adota uma definição ampliada, para entender a grave e generalizada violação de direitos humanos como fator de reconhecimento do status de refugiado. Este fato constitui o maior mérito da lei nacional sobre refugiados, pois, por meio dele, vislumbra-se a vontade política de proteger as pessoas vítimas de desrespeitos aos seus direitos mais fundamentais, de forma a denotar uma solidariedade para com os demais seres humanos e uma consciência da responsabilidade internacional do Brasil. (JUBILUT, 2007, p. 191).

the individual must seek a visa to remain in the country and not run the risk of being deported (FREITAS, 2024, p. 91). Each and every asylum seeker in Brazil needs to go through this process, which usually varies on average from one to two years according to Conare, although this procedure can take even longer due to bureaucratic issues.

The promulgation of the Refugee Statute further demonstrated the maturation of the young Brazilian democracy. In 1997, 12 years marked the end of the Military Dictatorship and nine years of application of the new Federal Constitution. Even in an economically turbulent period, Brazilian democracy managed to demonstrate resilience in the search for its consolidation.

### **Refuge numbers in Brazil**

With the application of the Refugee Statute, Brazil began to count requests and positive cases of asylum with more transparency and in an official manner. Official figures from Conare show that since the promulgation of Law No. 9.474/97, 406,695 asylum requests have accounted for in Brazil and the most recent entity report, recorded 58,628 new requests only in 2023. In total, 143,033 people recognized as refugees live in Brazil (JUNGER DA SILVA et al, 2024, p. 24-25), in addition to an imprecise number of people who are awaiting the end of their processes and are in the status of asylum seekers, in a provisional situation.

In 2017, the Migration Law came into valid that replaced the obsolete Foreigner Statute, which was revoked. Sanctioned on May 24, 2017, by then President Michel Temer, this new law brought more humanitarian guidelines for migrants in the country and is fully aligned with the Federal Constitution of 1988, guaranteeing migrants some basic rights, such as access to the health and social security system (FREITAS, 2024, p. 93).

This legislation was an old demand from parliamentarians and sectors of civil society who stated that the old Foreigner Statute was not in accordance with the present day.

### **Conclusion**

Seen as modern and comprehensive when created, the Refugee Statute was a major milestone in Brazil's migration legislation. From there, it was possible to adapt the rules of the Refugee Statute and the 1967 United Nations Protocol, promote greater knowledge on the issue of refuge, transform Brazil into a more viable place to welcome international displaced people and apply human rights demands to these subjects in a situation of forced displacement.

Finally, it is worth highlighting that the Refugee Statute, together with the stabilization of Brazilian democracy, was a big step towards the revision of the Foreigner Statute and the sanctioning of the new Migration Law, bringing more humanitarian aspects to migration legislation in Brazil.

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